



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

November 30, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on November 29, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the waiver program as a means to remain in their home where services can be provided. [Aged/Disabled (HCB) Services Manual Section 501]

Information submitted at the hearing fails to demonstrate that you continue to need the degree of care required to medically qualify for the Aged/Disabled Home and Community-Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
BoSS/WVMI
----, ----, WV

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

----,

Claimant,

v.

Action Number: 12-BOR-2202

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing for ----. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was originally scheduled to convene on November 14, 2012, but was continued at the request of the Claimant. This hearing convened telephonically on November 29, 2012, on a timely appeal filed September 6, 2012. Benefits and services provided through the Medicaid Aged and Disabled Waiver Program have continued pending a hearing decision.

II. PROGRAM PURPOSE:

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

----, Claimant
----, Homemaker RN, BSN, ----- Claimant's witness
----, Case Manager, ----
----, Claimant's homemaker/granddaughter
Kay Ikerd, RN, BoSS – Department's representative
Sarah "Betsy" Carpenter, RN, WVMI – Department's witness

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged/Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Waiver Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 8/13/12
- D-3 Notice of Potential Denial dated 8/14/12
- D-4 Notice of Decision dated 8/29/12
- D-5 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 7/15/11

Claimant's Exhibits:

- C-1 Correspondence from ----, RN, BSN, dated 10/15/12, Claimant's medical record from a physician's visit on 4/4/12, an Aged and Disabled Waiver Program Member Assessment conducted on 8/20/12

VII. FINDINGS OF FACT:

- 1) On August 13, 2012, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program. (See Exhibit D-2, Pre-Admission Screening (PAS), completed on 8/13/12).
- 2) On or about August 14, 2012, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 0 areas.

This notice goes on to advise the Claimant that additional medical information would be considered if received within two weeks.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated August 29, 2012 (Exhibit D-4). This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) recently conducted an assessment of your medical eligibility for the Aged and Disabled Waiver Program. You have been determined medically ineligible for Waiver services.

This decision results in the denial or termination of your Waiver services. This is based on policy in the Medicaid program regulations, Aged and Disabled Waiver Policy Manual, Section 501.5.1.1 and the Pre-Admission Screening (PAS) Form (attached).

Reason for Decision: Medical eligibility for the Aged and Disabled Waiver Program requires deficits in at least five (5) of the health areas listed below. This section indicates that there were no deficits identified.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in [sic] areas. Because you have less than five (5) deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) Respondent contended that because the medical assessment (Exhibit D-2) conducted by Betsy Carpenter, RN, West Virginia Medical Institute (WVMI), failed to identify any functional deficits, the Claimant is no longer medically eligible to participate in the ADW Program.
- 5) The Claimant contended that she did not understand the questions asked by RN Carpenter during the assessment, and therefore, she provided inaccurate information. She contends that she remains medically eligible to participate in the ADW Program, as she should have been awarded deficits in vacating [in the event of an emergency], bathing, dressing, grooming and bowel incontinence.
- 6) Testimony proffered by RN Carpenter reveals that the Claimant was oriented on the day of the assessment and she (RN Carpenter) had no reason to believe the Claimant was providing anything less than accurate information. RN Carpenter purported that she is very careful to explain each functional deficit and thoroughly assess each area. It was noted that while self-reported information is relied upon, observations of the Claimant's functional ability are also used to corroborate, or confirm functional deficits. RN Carpenter acknowledged that she completed the medical assessment on the Claimant the previous year (Exhibit D-5), but that information is not available to her when she conducts a reevaluation. RN Carpenter testified that she could not recall specific findings from the previous evaluation due to the volume of assessments she conducts annually.
- 7) As a matter of record, the Claimant acknowledged that she can vacate her home in the event of an emergency and noted that she can also navigate the steps leading out of her back exit by using the handrail. This finding alone supports Respondent's finding of medical ineligibility, as five (5) deficits are required, and a favorable finding in the remaining contested areas would identify only four (4). However, the Claimant testified that she cannot fasten her bra (dressing)

and does not recall reporting to RN Carpenter that she could. She further indicated that she requires physical assistance transferring in and out of the bathtub (bathing), and thought she told RN Carpenter that she did not need any mechanical assistance (grab bars or wheelchair). The Claimant does not recall reporting that she can complete all grooming tasks independently and stated that she requires assistance with washing her hair and nail care. With regard to bowel incontinence, the Claimant reported during the assessment that she does not use incontinence supplies and that she had not experienced any episodes of bowel incontinence for three (3) months. When further questioned if she has had any incontinence of bowel secondary to her IBS (Irritable Bowel Syndrome), the Claimant reported “no not for a while now.” The Claimant testified that she always has loose bowels and that she has accidents when she cannot get to the restroom quickly.

8) Aged/Disabled Home and Community-Based Services Manual Section 501 (D-1) - Program Eligibility for Client:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for NF Level of Care.

9) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – Purpose: The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

10) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 Medical Criteria: An individual must have five (5) deficits on the Pre Admission Screening (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

#24 Decubitus - Stage 3 or 4

#25 In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.

#26 Functional abilities of individual in the home
 Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 Bathing ----- Level 2 or higher (physical assistance or more)
 Dressing ---- Level 2 or higher (physical assistance or more)

Grooming--- Level 2 or higher (physical assistance or more)
Continence (bowel, bladder) -- Level 3 or higher; must be incontinent
Orientation-- Level 3 or higher (totally disoriented, comatose)
Transfer----- Level 3 or higher (one-person or two-person assistance in the home)
Walking----- Level 3 or higher (one-person assistance in the home)
Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)

#27 Individual has skilled needs in one or more of these areas:
(g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

#28 Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) Medicaid policy requires that an individual must demonstrate five (5) functional deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded zero (0) functional deficits on a PAS completed by WVMi in August 2012. The Claimant's contention that she did not understand the questions asked by RN Carpenter during the August 2012 assessment is unconvincing. RN Carpenter's thorough documentation provides a clear picture of the questions asked, the information provided by Claimant and justification for each of the findings. In addition, there was no evidence to indicate additional medical documentation was submitted during the two (2)-week period following the potential denial notice.
- 3) Evidence presented at the hearing fails to confirm the Claimant should have been awarded any additional functional deficits.
- 4) Whereas the Claimant was not demonstrating any program qualifying functional deficits at the time of the assessment, evidence confirms that the Claimant is no longer medically eligible to participate in the Medicaid Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of November 2012.

**Thomas E. Arnett
State Hearing Officer
Member, Board of Review**