



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

January 17, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical eligibility under the Aged and 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 and Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals that you do not meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your participation in the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----PRIDE in ██████ County, ██████ WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2334

**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 held at the WV DHHR, [REDACTED] County Office in [REDACTED] WV, with Department's representative and witness appearing by telephone conference call on January 10, 2012, on a timely appeal filed October 19, 2011.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (ADW) Program is defined as a long-term care alternative that provides services enabling 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
-----, Claimant's Representative and Daughter
-----RN, PRIDE in [REDACTED] County, Claimant's Witness
-----, PRIDE in [REDACTED] County, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
-----, RN, West Virginia Medical Institute, Department's Witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening (PAS) conducted on September 8, 2011.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Section 501.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.5.
- D-2 Pre-Admission Screening (PAS) assessment conducted on September 8, 2011.
- D-3 Potential denial letter from APS Healthcare, dated September 13, 2011.
- D-4 Denial letter from APS Healthcare, dated October 3, 2011.
- D-5 Pre-Admission Screening (PAS) assessment conducted on September 21, 2010.

VII. FINDINGS OF FACT:

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of her continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in her home on September 8, 2011. (Exhibit D-2.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5.1 (Exhibit D-1) MEDICAL CRITERIA states in pertinent part:

An individual must have five (5) deficits on the Pre Admission Screening (PAS), Attachment 14, 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.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on September 8, 2011 in the Claimant's home. She stated that the Claimant, Claimant's daughter and she were the only persons present. She added that she assessed Claimant with one deficit on the PAS for grooming and therefore she did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department sent the Claimant and Claimant's Case Management Agency a Notice of Potential Denial dated September 13, 2011. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WMI within the next 2 weeks." The PAS does not indicate that the Department received any

additional medical information. The Department sent a Notice of Termination /Denial on October 3, 2011. (Exhibit D-4.)

- 5) Claimant's representative asserted that Claimant should have received additional deficits in the areas of vacating a building during an emergency, bathing, continence, orientation, walking, and medication administration.
- 6) ***Vacating a building during an emergency:*** The WVMI nurse rated Claimant at Level 2, "With Supervision," and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] transfers and walks most of the time independently and will at times use furniture, walls to assist/steady herself when transferring or walking. She verbalizes some memory issues and reports diagnosis of vascular dementia and both she and daughter state she would probably require supervision from another individual to ensure her safety to get out of the home . . . [Claimant] states she can walk down the steps [from the house to the yard] using handrail and taking one step at a time." Claimant's representative stated that Claimant is often confused and has a diagnosis of vascular dementia. She added that her mother's mental confusion and walking difficulties made it impossible for her to vacate her home during an emergency without at least one person to assist her. Department's witness testified that she observed Claimant walking independently around the home, and Claimant was not confused during the PAS. She added that both Claimant and Claimant's representative stated during the PAS that Claimant could vacate during an emergency with supervision.
- 7) ***Bathing:*** The WVMI nurse rated the Claimant at a Level 1, "Self/prompting," and wrote in the "Nurse's overall comments" section, "[Claimant] showers and they have a walk-in shower and has a shower chair. She states she can get into and out of shower and she washes herself. She crosses her legs and can wash lower legs and feet and states she can use her wash cloth and can wash her own back." Claimant's representative stated that her mother can get into and out of the shower, but she cannot wash her own back. Department's witness testified on the day of the PAS, Claimant stated very clearly that her home has a walk-in shower and she showered independently, and that Claimant's daughter did not contradict this statement.
- 8) ***Continence:*** The WVMI nurse rated Claimant at Level 2, "Occasionally incontinent," and wrote, "[Claimant] has had accidents occasionally . . . I asked her what 'occasionally' meant to her and she said 'maybe twice a week.'" Claimant's representative stated that Claimant told the assessing nurse she had accidents about twice per week but that she has accidents much more often now. Department's witness testified that Claimant told her she had accidents about twice per week, which fits the definition of 'occasionally incontinent.' She added that Claimant's daughter was present and did not contradict Claimant's statement.
- 9) ***Orientation:*** The WVMI nurse rated Claimant at Level 2, "Intermittently disoriented," and wrote, "[Claimant] is alert and oriented x 3. She signed and dated the consent form without prompting . . . We discussed disorientation and she

verbalized at times she will wake up during the night and not know at first where she is.” Claimant’s representative stated that her mother is confused at times, and has had periods in which she is totally incoherent. Department’s witness testified that during the PAS, Claimant was oriented to person, place and time, but reported that at times she wakes up at night and is confused about where she is. Department’s witness stated that she rated Claimant as intermittently disoriented, but in order to assess her with a deficit, Claimant would have to be totally disoriented at all times.

- 10) ***Walking:*** The WVMI nurse rated the Claimant at a Level 2, “Supervised/assistive device,” and wrote in the “Nurse’s overall comments” section, “[Claimant] walks independently most of the time within the home. Daughter states she will occasionally see her reach out when walking from one room to the other . . . and will have to use walls to steady herself.” Claimant’s representative stated that she is using her walker much more at home now than when the PAS was conducted, and that she does not walk outside the home without the walker. Department’s witness testified that even if Claimant had been using a walker constantly in the home, that is still considered an assistive device, and one-person assistance is required in order to receive a deficit.
- 11) ***Medication Administration:*** The WVMI nurse rated Claimant at Level 2, “With prompting and supervision,” and wrote, “[Claimant] states she sets [the medications] up into a weekly planner with supervision of daughter. Once they are set up, daughter states she is good about remembering to take them daily.” Claimant’s representative stated that her mother only set up her medications once, and that she had taken over that task completely because her mother was over-medicating herself. She stated that she sets her mother’s medications up weekly, then she puts them in a container and gives them to her mother at the appropriate times for her morning, mid-day and evening dosages. She added that her mother takes the pills from the container and swallows them. Department’s witness testified that in order to assess Claimant for a deficit for medication administration, Claimant could not physically pick up the pills and place them in her mouth. She added that any type of setting up of medication, whether weekly or set out before a person at the dosage time, is considered to be prompting and supervision, and does not meet the criterion for this deficit.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. On her PAS that was performed on September 8, 2011, Claimant obtained one deficit.
- 2) The Department was correct in its decision not to assess a deficit in the area of vacating a building during an emergency. Department’s witness testified and recorded on the PAS that she observed Claimant walking independently and

Claimant was oriented. Both Claimant and Claimant's daughter stated on the PAS that she could vacate with supervision.

- 3) The Department was correct in its decision not to assess a deficit in the area of bathing. Department's witness testified and recorded on the PAS that Claimant could get into and out of the shower without assistance, and could wash all body parts. The PAS also states Claimant's daughter did not contradict this statement.
- 4) The Department was correct in its decision not to assess a deficit in the area of continence. Department's witness testified and recorded on the PAS that Claimant reported "one or two" bladder accidents per week, which meets the definition of occasionally incontinent.
- 5) The Department was correct in its decision not to assess a deficit in the area of orientation. Department's witness testified and recorded on the PAS that Claimant was oriented to person, place and time. Claimant reported some night-time confusion, but this does not meet the definition of totally disoriented.
- 6) The Department was correct in its decision not to assess a deficit in the area of walking. Department's witness testified and recorded on the PAS that Claimant walked independently. Claimant would require the assistance of at least one person at all times in order to receive a deficit for walking.
- 7) The Department was correct in its decision not to assess a deficit in the area of medication administration. Claimant's representative testified during the hearing that she put her mother's medications in a container, from which her mother took them by herself. In order to receive a deficit for medication administration, Claimant would not be able to put her pills in her mouth and swallow them.
- 8) Claimant provided no testimony or evidence to support a finding that additional deficits should have been awarded in the assessment; therefore, the required five (5) deficits have not been established to meet medical eligibility criteria for the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate Claimant's participation in the Aged and Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of January, 2012.

Stephen M. Baisden
State Hearing Officer