



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

February 1, 2012

----- For: -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on January 6, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your mother's medical eligibility for 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 homes where services can be provided. [Aged and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals that your mother does 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 deny your mother's application for 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

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2345

**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 conducted by telephone and videoconference, with Claimant's
representative appearing at the [REDACTED] County Office of the WV DHHR in [REDACTED]
WV, Department's representative and witness appearing by telephone conference call,
and the Hearings Examiner appearing at the [REDACTED] County Office of the WV DHHR in
[REDACTED] WV. This took place on January 6, 2012, on a timely appeal filed November
3, 2011.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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's Representative

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Anna Matney, 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 deny Claimant's application for the Aged and Disabled Home and Community-Based Waiver Program based on a Pre-Admission Screening (PAS) conducted on September 15, 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 15, 2011.
- D-3 Potential denial letter from APS Healthcare, dated September 28, 2011
- D-3 Denial letter from APS Healthcare, dated October 12, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was an applicant for the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of the application process, a nurse from the West Virginia Medical Institute (WVMI) performed a Pre-Admission Screening (PAS) in Claimant's home on September 15, 2011. (Exhibit D-2.)
- 2) Aged and Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5.1.1 (Exhibit D-1) MEDICAL CRITERIA states in pertinent part:

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.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on September 15, 2011 in the Claimant's home. She stated that the Claimant, Claimant's daughter and she were the only persons present at the beginning, and Claimant's representative arrived at the end of the assessment session. She added that she assessed Claimant with three (3) deficits on the PAS, for vacating a building during an emergency, bathing and grooming, and therefore Claimant did not meet the medical eligibility criteria for the Program.
- 4) The Department sent the Claimant and Claimant's physician a Notice of Potential Denial dated September 28, 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 WVMJ within the next 2 weeks." The PAS did not indicate that the Department received any additional medical information from Claimant's physician. The Department sent a Notice of Termination/Denial to Claimant on October 12, 2011. (Exhibit D-4.)
- 5) Claimant's representative asserted that Claimant should have received additional deficits on the September 15 PAS in the areas of dressing, continence, orientation and transferring.

- 6) **Dressing:** The WVMI nurse rated the Claimant at Level 1, “Self/Prompting” and wrote in the “Nurse’s overall comments” section of the PAS, “[Claimant] hooks her bra and puts it on herself by twisting it around. She had on a house coat with snaps and was able to demonstrate snapping without difficulty. She had a sweater on over that and was able to demonstrate buttoning without difficulty . . . She states she can use a zipper herself . . . Observed her putting shoes on independently.” Claimant’s representative stated that her mother can dress herself, but she does not dress appropriately, and that she may wear three pairs of pants or two bras. She added that her mother needs help getting dressed due to her mental confusion. Department’s witness testified that during the PAS, Claimant told her how she put on her bra, and demonstrated she could fasten snaps and buttons, and put on her shoes.
- 7) **Continence:** The WVMI nurse rated the Claimant at Level 1, “Continent” for continence of bladder and Level 2, “Occasionally Incontinent” for continence of bowels. She wrote on the PAS, “[Claimant] denies having accidents with her bladder. She states she has occasional accidents with her bowels. She says approximately one time a month.” Claimant’s representative stated that her mother’s bowel incontinence has gotten worse since the PAS was conducted, but did not indicate how many accidents her mother had, or how frequently they occurred.
- 8) **Orientation:** The WVMI nurse rated the Claimant at Level 2, “Intermittently Disoriented” and wrote “[Claimant] did not know her box number but she did know the city. She stated her birthday . . . She states that the president has a little bit of hair on his head and he is [African-American]. She could not think of his name. She states that [the PAS took place at] five o’clock in the afternoon which is correct.” Claimant’s representative stated that Claimant has dementia and severe Alzheimer’s. She stated that she has observed that her mother is getting worse. She added that physically, her mother is doing well for her age, but mentally, she needs someone with her at all times.
- 9) **Transferring:** The WVMI nurse rated the Claimant at Level 2, “Supervised/Assistive Device” and wrote “[Claimant] pushes off the mattress of her hospital bed to stand. She uses a [bed-side commode] and pushes off the arm-rest to stand.” Claimant’s representative stated that when her mother came back from a hospital stay due to an operation, she was provided a hospital bed. She stated she and her sister had to lower the bed rails and physically help her mother out of bed to use the bathroom at night. Department’s witness stated that during the PAS she observed Claimant stand up from her hospital bed, walk across the room, return to her bed and sit back down by holding onto her hospital bed rails and arm rests.
- 10) Claimant’s representative stated that her mother’s condition is deteriorating, and she needs someone to be with her due to her worsening dementia. She stated that she arrived at home while the PAS was being conducted and was nearly complete, and she felt that if she were there earlier during the assessment, she may have been able

to offer the assessing nurse more accurate insights into her mother's medical and physical condition.

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 and Disabled Waiver Program. On her PAS that was performed on September 15, 2011, Claimant obtained three (3) deficits.
- 2) Claimant's representative argued that deficits should have been assessed in the areas of dressing, incontinence, orientation and transferring.
- 3) The Department was correct in its decision not to assess a deficit in the area of dressing. Department's witness testified and recorded on the PAS that Claimant demonstrated she could use clothing snaps and buttons, and could put on her shoes.
- 4) The Department was correct in its decision not to assess a deficit in the area of continence. Claimant informed Department's witness during the PAS that she had bowel accidents about once per month. In order to assess Claimant with a deficit for this ability, the witness would need to document two to three accidents per week.
- 5) The Department was correct in its decision not to assess a deficit in the area of orientation. Department's witness indicated on the September 15 PAS that Claimant was oriented to person, place and time.
- 6) The Department was correct in its decision not to assess a deficit in the area of transferring. Department's witness testified and recorded on the PAS that she observed Claimant stand up, walk across the room and sit back down by holding onto arm rests and bed rails.
- 7) Claimant's representative did not provide testimony or evidence to support a finding that additional deficits should have been awarded on 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 deny Claimant's application for 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 1st Day of February, 2012.

Stephen M. Baisden
State Hearing Officer