



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

March 14, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on February 22, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your 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 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 deny your 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: 12-BOR-348

**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 concluded on March 14, 2012 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 conference call on February 22, 2012, on a timely appeal filed December 15, 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
-----, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Brenda Myers, 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 August 25, 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 August 25, 2011
- D-3 Potential denial letter from APS Healthcare, dated August 30, 2011
- D-4 Letter from [REDACTED] D.O., dated September 13, 2011
- D-5 Denial letter from APS Healthcare, dated February 21, 2012
- D-6 Letter from West Virginia Medical Institute to [REDACTED] D.O., dated September 23, 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 August 25, 2011. (Exhibit D-2.)
- 2) Aged and Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3 (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 August 25, 2011 in the Claimant's home. She stated that the Claimant, Claimant's daughter, Claimant's grandson, and she were present for the assessment session. She stated that she assessed Claimant with one deficit on the PAS, for continence, and therefore Claimant did not meet the medical eligibility criteria for the Program.
- 4) The Department issued a Notice of Potential Denial dated August 30, 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 WVMI within the next 2 weeks." Department's witness testified that she received additional information from Claimant's physician, [REDACTED] D.O., which permitted her to assess Claimant with another deficit, for vacating a building during an emergency. (Exhibit D-4.) However, Department's witness added that Claimant still lacked the required five deficits to be approved for the ADW Program. The Department sent a Notice of Termination/Denial to Claimant on February 12, 2012. (Exhibit D-5.)

- 5) Claimant's representative asserted that Claimant should have received three additional deficits on the August 25 PAS, in the areas of eating, transferring and walking.
- 6) **Eating:** On the August 25 PAS (Exhibit D-2) at item #26-a, eating, the WVMi nurse assessed the Claimant "self/prompting," which is not sufficient to award a deficit. She wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] states she can feed herself and cuts up her own food. She states she still cooks and denies that she needs someone to cut up her food for her. She denies eating steak or porkchop [sic] as it's hard for her to chew as she doesn't wear her bottom denture as it doesn't fit correctly. She states when she eats chicken she will just use her fingers and pull meat off the bone and when she eats a hamburger she can use a knife and fork to cut it herself." Claimant testified that she no longer was able to cook for herself. She stated that her son and daughter-in-law cook for her and bring the food to her home. Department's representative asserted that food preparation is not an element of this functional ability.
- 7) **Transferring:** On the PAS (Exhibit D-2) at item #26-h, transferring, the WVMi nurse assessed the Claimant "supervised/assistive device," which is not sufficient to award a deficit. She wrote in the "Nurse's overall comments" section, "[Claimant] uses cane to help push up on as she stands from transferring from a couch or chair. She sleeps in a regular bed and can get into and out of bed without physical assistance. She states she uses her cane to help transfer off the toilet as well." Claimant testified that when she gets out of bed in the mornings, her body hurts and she is dizzy. She added that she has to sit on the side of the bed for a while until the dizziness stand before she can get up. Department's witness testified in order for a person to be assessed with a deficit for transferring, she would require the assistance of someone to help her get from a seated position to a standing position.
- 8) **Walking:** On the PAS (Exhibit D-2) at item #26-i, walking, the WVMi nurse assessed the Claimant "supervised/assistive device," which is not sufficient to award a deficit. She wrote in the "Nurse's overall comments" section, "[Claimant] uses a straight cane while ambulating in the home and will also reach out with other hand when needed to steady herself with furniture or other objects. She has a walker that has two wheels and tennis balls on the back but she states she normally does not use it in the home." Claimant testified that she must grab onto things in order to walk in her home. She added that when she walks in her home to use the bathroom, she is out of breath by the time she returns to her previous location. Department's witness testified in order for a person to be assessed with a deficit for walking, she would need someone to support and assist her at all times while ambulating.

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 the PAS that was performed on August 25, 2011, Claimant obtained two (2) deficits, for vacating a building during an emergency and continence.

- 2) Claimant's representative argued that three (3) additional deficits should have been assessed in the area of eating, transferring and walking.
- 3) The Department was correct in its decision not to assess a deficit in the area of eating. Claimant stated during the hearing that she was unable to cook for herself. Food preparation is not a component of this functional ability.
- 4) The Department was correct in its decision not to assess a deficit in the area of transferring. Claimant provided no testimony or evidence to indicate she needed the assistance of another person to get from a seated or prone to a standing position.
- 5) The Department was correct in its decision not to assess a deficit in the area of walking. Claimant provided no testimony or evidence to indicate she needed the assistance of another person in order to walk.
- 6) Claimant 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 14th Day of March, 2012.

**Stephen M. Baisden
State Hearing Officer**