



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

April 9, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 28, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid Aged and Disabled Waiver (ADW) Program services based on medical findings.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department was correct to award four deficits during your most recent PAS assessment, and to deny ADW services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Department Representative
Angie Hill, West Virginia Medical Institute
[REDACTED] Case Manager

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

IN RE: ---- ----,

Claimant,

v.

ACTION NO.: 12-BOR-475

**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 April 9, 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 convened on March 28, 2012, on a timely appeal, filed January 12, 2012.

All persons offering testimony were placed under oath.

It should be noted that benefits have been continued through the hearing process.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (hereinafter "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 representative

Kay Ikerd, Department representative

Angie Hill, Department witness

Presiding at the Hearing was Todd Thornton, 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 decision to terminate Aged and Disabled Waiver Program services to the Claimant based on medical findings.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1
- D-2 Pre-Admission Screening (PAS) form, dated December 20, 2011
- D-3 Additional information
- D-4 Notice of decision, dated January 5, 2012
- D-5 Pre-Admission Screening (PAS) form, dated January 26, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a 66-year-old male recipient of Aged and Disabled Waiver (ADW) Services. Angie Hill, a registered nurse employed by West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on December 20, 2011 (Exhibit D-2) to reevaluate medical eligibility for the program. The Department issued a denial notice (Exhibit D-4) to the Claimant on January 5, 2012, which indicated that only four deficits were awarded, and that a minimum of five deficits are required for medical eligibility.

- 2) Kay Ikerd, representative for the Department's Bureau of Senior Services, testified that the applicable policy for this proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services. At §501.5.1.1, this policy (Exhibit D-1) states, as follows:

501.5.1.1 Medical Criteria

An individual must have five deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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) Ms. Hill testified that based on her December 20, 2011, PAS assessment she awarded the Claimant deficits in four areas: *eating*, *bathing*, *grooming*, and the ability to *vacate a building in the event of an emergency*.
- 4) Three additional areas were proposed on the Claimant's behalf: the skilled needs of *sterile dressing* and *irrigation* and the functional ability of *dressing*. [REDACTED] the Claimant's case manager, testified that the Claimant has an infection and goes to a wound center regularly to have sterile dressings and irrigations applied. Ms. Hill testified that she was aware of the Claimant's visits to the wound center, but noted that the PAS is only intended to assess abilities in the home.
- 5) [REDACTED] testified that the Claimant requires assistance in the functional area of *dressing*. The Claimant testified that he could dress himself, but that it takes a long time. The Claimant testified that he did not tell Ms. Hill during the PAS assessment that the sock assist he uses was broken because he thought that it could be repaired. Ms. Hill noted her findings regarding dressing on page 7 of the December 20, 2011 (Exhibit D-2) PAS as follows:

DRESSING-

MEMBER STATES HE PUTS HIS CLOTHES ON WHILE SITTING DOWN AND THEN STANDS AND HOLDS ON WHILE HE IS PULLING IS [sic] PANTS UP. MEMBER STATES HE CAN DRESS HIMSELF COMPLETELY WITHOUT ASSIST. MEMBER DEMONSTRATES HE CAN UNBUTTON AND BUTTON HIS SHIRT BUT STATES HE USUALLY LEAVES THEM BUTTONED AND THEN PULLS IT ON OVER HIS HEAD. MEMBER STATES HE CANNOT WEAR SOCKS DUE TO UNNA BOOTS DRESSINGS BUT HAS A SOCK ASSIST HE HAS USED WHEN HE COULD WEAR SOCKS. HE STATES HE WEARS SLIP ON SHOES. MEMBER IS DRESSED IN A BUTTONED UP SHIRT, PAJAMA PANTS, AND NO SOCKS OR SHOES AT THIS TIME.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had four qualifying deficits. Testimony on the Claimant's behalf proposed three additional deficits in the areas of *sterile dressing*, *irrigation*, and *dressing*. The PAS assessment is intended to identify skilled needs in the home, not outside the home; the wound care the Claimant receives outside the home cannot be considered. The Department correctly assessed the areas of *sterile dressing* and *irrigation*.

- 2) Testimony and evidence indicated that the Claimant is able to dress himself. The Claimant qualified this by testifying that it would take him a long time to dress himself without assistance. The Claimant indicated that information he could have provided during the PAS assessment – regarding the use of a device to help him put on socks – he did not provide to the WVMi nurse. The Department correctly assessed the area of *dressing*.
- 3) With no additional deficits revealed through testimony or evidence, the proposed Department action to terminate the Claimant's Aged/Disabled Waiver benefits is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility requirements.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2012.

Todd Thornton
State Hearing Officer