



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

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

April 25, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 19, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits under the 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 your hearing reveals that you do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your application for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

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

Claimant,

v.

ACTION NO.: 12-BOR-697

**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 convened via videoconference on April 19, 2012 on an appeal filed February 14, 2012. The hearing was originally scheduled for April 11, 2012, but was rescheduled at the request of the Department.

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's stepdaughter
---- ----, Office Manager, Central West Virginia Aging Services
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
Courtney Smith RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its action to deny benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501.5, 501.5.1, 501.5.1.1 and 501.5.1.1(a)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) completed on January 17, 2012
- D-3 Notice of Potential Denial dated January 24, 2012
- D-4 Notice of Decision dated February 8, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was an applicant for benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if she meets medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Courtenay Smith completed a Pre-Admission Screening (PAS) medical assessment on January 17, 2012 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits one (1) qualifying deficit in the area of *mental inability to vacate the building in the event of an emergency*.
- 3) The Claimant was sent a Notice of Potential Denial on January 24, 2012 (D-3) and was advised that she had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final Notice of Decision informing her of the denial of benefits on February 8, 2012 (D-4).
- 5) ---- ----, the Claimant's stepdaughter, testified that the Claimant should have been awarded deficits in the areas of physical assistance with bathing, physical assistance with grooming and orientation. ---- ---- indicated that the Claimant has appeared at her workplace in a nightgown and pants with her hair disheveled. She stated that the Claimant would not bathe without being walked into the bathroom and directed to do so. ---- ---- indicated that the Claimant now needs assistance washing her back because she has a colostomy. She testified that the Claimant has difficulty remembering due to Alzheimer's disease. The Claimant's

stepdaughter stated that she did not feel that she could correct the Claimant during the assessment because the Claimant is a proud person and she did not believe she had the right to dispute her responses.

The WVMi Nurse testified that the Claimant reported the ability to get into the shower using a shower chair, wash her body unassisted and perform all grooming activities on the date of the PAS. Therefore, she was rated as self/prompting in bathing and grooming. The Claimant was not completely disoriented during the assessment, as the WVMi Nurse indicated that the Claimant was able to identify herself, her location and the year, but was unable to identify the month or day. Therefore, the Claimant was rated as being intermittently disoriented on the PAS.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-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.

8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1 (D-1): 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) 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. The Claimant was awarded one (1) deficit on her January 2012 Aged/Disabled Waiver Program medical evaluation.
- 2) No additional functional deficits can be awarded to the Claimant based on information provided during the hearing. The Claimant indicated she could bathe and groom unassisted during the PAS and no information was provided to contradict her responses. In addition, the Claimant was not totally disoriented on the date of the assessment.
- 3) The Claimant's total number of deficits remains at one (1), rendering her medically ineligible for participation in the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's action to deny the Claimant's benefits under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of April, 2012.

**Pamela L. Hinzman
State Hearing Officer**