



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

Board of Review
P.O. Box 1736
Romney, WV 26757

**Earl Ray Tomblin
Governor**

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

May 31, 2012

Dear ----- :

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 23, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Medicaid 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed that you do not meet the medical eligibility requirements of the program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review
Kay Ikerd-Bureau of Senior Services

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

IN RE: ----- ,

Claimant,

v.

ACTION NO.: 12-BOR-925

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on May 23, 2012, on a timely appeal, filed March 12, 2012.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program (ADW) 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, Bureau of Senior Services (BoSS)

Sarah "Betsy" Carpenter, RN, West Virginia Medical Institute (WVMI)

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department is correct in its proposal to deny the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening dated February 1, 2012
- D-3 Notice of Potential Denial dated February 6, 2012
- D-4 Notice of Decision dated February 21, 2012

VII. FINDINGS OF FACT:

- 1) On February 1, 2012, the West Virginia Medical Institute (WVMI) nurse, medically assessed the Claimant to determine her medical eligibility for the Aged and Disabled Waiver program using the Pre-Admission Screening (PAS) (Exhibit D-2) assessment tool.
- 2) Ms. Sarah "Betsy" Carpenter, WVMI assessing nurse, completed the assessment with the Claimant and identified functional deficits for the Claimant as vacating during an emergency, bathing, grooming, and dressing.
- 3) On February 6, 2012, the Claimant was issued Notice of Potential Denial (Exhibit D-3). This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual.

Based on your PAS, you have deficiencies in only 4 areas-vacate a building, bathing, grooming and dressing.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On February 21, 2012, the Claimant was issued a Notice of Decision (Exhibit D-4), informing her that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been Terminated/Denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the right to dispute this decision and ask for a hearing.

Reason for decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form), indicated deficiencies in 4 areas-vacate a building, bathing, grooming and dressing.

- 5) The Claimant contends that she is medically eligible for the program and asserted that an additional deficit should have been awarded in the area of bladder incontinence. Testimony indicated that at the time of the assessment the Claimant experienced mild bladder incontinence. Testimony indicated that the Claimant had been prescribed medication which alleviated some of her symptoms of bladder incontinence; however, since the conducted assessment, the Claimant has ceased taking the prescribed medication and her condition has worsened. -----, Claimant's witness, clarified the Claimant's mild incontinence indicating that the Claimant did not experience a full loss of bladder with an episode "every other day". Ms. Carpenter assessed the Claimant at a Level 1, Continent, and documented her findings as "[Claimant] reports bladder incontinence, bladder only, I have stress incontinence the oxybutynin [sic], denies use of incontinent supplies, in the past 7 days denies incontinent episodes of bowel, deniex [sic] hx of bowel incontinence in her lifetime, in the past 7 days denies incontinent episodes of bladder, reports last stress incontinent episode of urine as a month or two ago, I'm doing a lot better with medicine."

Policy specifies that a deficit is awarded in the area of incontinence when the individual is assessed at Level 3 or higher. Testimony indicated that the individual must experience three or

more accidents of the bowel or bladder per week in order for a deficit to be assessed in the contested area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 503.1.1 – 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 ADW 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 501.3.2 Medical Criteria: 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 requires that to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five health areas on the PAS.
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of vacating, bathing, grooming and dressing.
- 3) During the assessment, the Claimant denied recent episodes of bladder incontinence. Testimony revealed that the Claimant experienced random and sporadic episodes of bladder incontinence at the time of the assessment. Testimony did not reveal that the Claimant experienced three or more weekly episodes of bladder incontinence at the time of the assessment; therefore, based on information that was known at the time of the medical assessment, the assessing nurse correctly assessed the Claimant as continent and an additional deficit in the contested area cannot be awarded.
- 4) Testimony and evidence presented during the hearing did not reveal an additional deficit; therefore, the Claimant's total number of deficits for medical eligibility is four and the Department was correct in its decision to deny the Claimant's application for the Aged and Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's medical eligibility under 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 _____ day of May 2012.

Eric L. Phillips
State Hearing Officer