



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

June 4, 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 terminate 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
Senior Life Services of ----- County

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-996

**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 a timely appeal, filed March 15, 2012.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

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's Attorney-In-Fact and daughter
Kay Ikerd, RN, Bureau of Senior Services (BoSS) Department representative
Lee Ann Beihl, RN, West Virginia Medical Institute (WVMI) Department witness

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 terminate 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 January 27, 2012
- D-3 Notice of Potential Denial dated February 1, 2012
- D-4 Notice of Decision dated March 2, 2012
- D-5 Pre-Admission Screening dated February 18, 2011
- D-6 Letter from -----, M.D. dated February 10, 2012

VII. FINDINGS OF FACT:

- 1) On January 27, 2012, Ms. Lee Ann Beihl, RN-West Virginia Medical Institute (WVMI), medically assessed the Claimant to determine her continued eligibility for the Aged and Disabled Waiver (ADW) program using the Pre-Admission Screening (PAS) assessment tool (Exhibit D-2).
- 2) Aged and Disabled Waiver Policy (Exhibit D-1) specifies that "an individual must have five deficits as described on the PAS to qualify medically for the ADW program."
- 3) During the current 2012 assessment, Ms. Beihl identified the Claimant's functional deficits as bathing, dressing and continence.
- 4) The Claimant was previously determined medically eligible for the ADW program in 2011, because she demonstrated deficits in the areas of vacating, bathing, dressing, grooming, continence, transferring, walking, and wheeling. Ms. Beihl conducted the 2011 PAS assessment (Exhibit D-5) with the Claimant and indicated that in the previous year the Claimant was prescribed hydrocodone for back pain and demonstrated an inability to raise her

arms or cross her legs in order to participate in the functional areas. Ms. Beihl indicated that since the 2011 assessment, the Claimant's condition had improved and she is no longer being prescribed hydrocodone. During the 2012 assessment, Ms. Beihl noted that the Claimant is currently utilizing over-the-counter pain medications.

- 5) On February 1, 2012, the Claimant was issued a 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 3 areas-bathing, dressing and continence.

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.

- 6) Ms. Beihl acknowledged her receipt of a letter signed by the Claimant's physician (Exhibit D-6) that addressed his concerns for the Claimant's need for assistance in the home. This letter indicates the Claimant's difficulties in vacating, bathing, dressing, grooming, continence, orientation, transferring, walking and medication administration. Ms. Beihl identified the physician's concerns in the PAS, but did not change any of her findings as a result of the submitted information. Ms. Beihl documented in the PAS that she reviewed the Claimant's functional levels with the individuals present during the assessment, including the Claimant's Attorney-In-Fact and -----, RN, ----- of ----- County, and all were in agreement with her findings.
- 7) On March 2, 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 3 areas-bathing, dressing and continence.

- 8) -----, the Claimant's Attorney-In-Fact and daughter, contends that her mother remains medically eligible for the ADW program and asserted that additional deficits should have been awarded in the areas of vacating, medication administration and walking.

The following addresses the contested areas.

Vacating----- ----- acknowledged that during the assessment, her mother demonstrated her ability to vacate her home to the assessing nurse. However, ----- - asserted that in an emergency situation, her mother would experience a panic attack and would not be able to exit her home due to confusion. Ms. Beihl documented in the PAS that the Claimant stated she was able to independently vacate in an emergency. Ms. Beihl indicated that she determined the Claimant to be independent in walking and intermittently disoriented and believed the Claimant had the capacity to vacate and follow instructions to vacate. The documentation provided by the Claimant's physician reads "[Claimant] would have problems vacating her house in an emergency. Under stress she gets confused and might not choose the safe way out of the house." Upon review of information provided by the physician, Ms. Beihl documented an addendum to the PAS which reads, "[Claimant] was assessed during the PAS as being independently able to vacate in case of emergency. She was asked if she would be able to get out of the building in case of emergency. She stated she would. She was asked how she would get out, she stated she would go through the back door or through the front if it was not available. She was adamant that she would be able to achieve this without guidance. The family members agreed at that point that she would be able to vacate."

Policy specifies that a deficit is awarded in vacating when the individual is mentally or physically unable to vacate a building in the event of an emergency. An individual's ability to vacate independently and with supervision is not considered a deficit.

Medication Administration-Testimony indicated that the Claimant has the capacity to administer her own medications, but requires prompting and supervision. ----- indicated that her mother can forget to take her medication and she must be reminded and supervised, in order to prevent duplicate doses. Ms. Beihl documented in the PAS that the Claimant's medications are prompted and supervised by the family and that the Claimant was able to put oral medications in her mouth. The documentation provided by the Claimant's physician notes "[Claimant] definitely needs help with her medications."

Policy specifies that a deficit is awarded in medication administration when the individual is not capable of administering their own medications.

Walking----- ----- indicated that her mother was on a high dosage of prednisone on the day of the assessment and was having a “good day”. ----- indicated that her mother cannot ambulate as well as she did on the day of the assessment and at times must utilize a wheelchair in the home. Ms. Beihl documented in the PAS the following “[Claimant] demonstrated walking with good balance, steady gait, does not use assistive devices in the home. States she has not fallen but states she staggers and runs into things.” The documentation provided from the Claimant’s physician indicated that the Claimant required one-person assistance with walking.

Policy specifies that a deficit is awarded for walking when the individual is assessed at a Level 3 or higher meaning that person requires one-person assistance in the home.

- 9) 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 nursing home level of care.

- 10) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1– 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.

- 11) 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)
 Contenance (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 in order 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 Pre-Admission Screening assessment (PAS).
- 2) During the medical assessment, the Claimant demonstrated functional deficits in 3 areas including bathing, dressing and continence.
- 3) The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant's functional abilities based on information reported at the time of the assessment. During the assessment, the Claimant reported her ability to independently vacate her residence in the event of an emergency and was aware of all escape routes available in her home. While the Claimant was assessed as intermittently disoriented, it is reasonable to assume that the Claimant could follow instructions in the event of an emergency. Policy specifies that supervision is not considered a deficit; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit for walking cannot be awarded.
- 4) Evidence revealed that the Claimant was able to administer her own medication with supervision. Because the Claimant presented an ability to administer her own medication, the

assessing nurse was correct in her assessment and an additional deficit in the contested area cannot be awarded.

- 5) The Claimant demonstrated her ability to ambulate without assistance on multiple occasions during the assessment. Therefore, the assessing nurse correctly assessed the Claimant as independent in her ability to ambulate and an additional deficit in the contested area cannot be awarded.
- 6) Evidence presented during the hearing did not reveal any additional deficits; therefore, the Claimant's total number of deficits for medical eligibility is three 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 terminate 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 June 2012.

Eric L. Phillips
State Hearing Officer