



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 23, 2009

C/O -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 6, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through 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]

The information submitted at your hearing reveals that your medical condition continues to require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying your application for benefits and services through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-1493

**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 October 23, 2009 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 October 6, 2009 on a timely appeal filed June 22, 2009.

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

-----, Claimant's witness

██████████ RN, CCIL

Kay Ikerd, RN, BoSS (participated telephonically)

Debra Lemasters, RN, WVMI (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny the Claimant's application for benefits and services through the Medicaid Aged & Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

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) assessment completed on May 22, 2009
- D-3 Notice of Potential Denial dated May 26, 2009
- D-4 Notice of Termination/Denial dated June 10, 2009

VII. FINDINGS OF FACT:

- 1) On May 22, 2009, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program { See Exhibit D-2, Pre-Admission Screening (PAS) form).
- 2) On or about May 26, 2009, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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, Chapter 503.2.

Based on your PAS you have deficiencies in only 4 areas – Vacate a Building, Grooming, Dressing and Transfer.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received/reviewed within the time allotted in notice.

- 3) The Claimant was notified that medical eligibility could not be established via a termination/Denial Noticed dated March 19, 2009 (Exhibit D-4). This notice states, 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 a 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, Grooming, Dressing and Transfer

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates four (4) deficits but indicated the medical assessment completed on May 22, 2009 fails to identify five (5) functional deficits as required by policy.
- 5) The Claimant and her representatives contend that the Claimant remains medically eligible to participate in the ADW Program as she is demonstrating a functional deficit in bathing and incontinence (bladder).

Incontinence (bladder) – Documentation found on the PAS reveals the Claimant denied bladder incontinence during the assessment and the physician referral did not include a diagnosis of incontinence. The Claimant testified that she was not using incontinent supplies when the assessment was done but that she frequently had skin irritation that may have been from urine leaking. In the absence of clinical documentation to corroborate and diagnose bladder incontinence, a deficit cannot be established in this functional area.

Bathing – ----- testified that the Claimant is unable to bathe herself completely due to her diagnosis of morbid obesity, cellulitis in her left leg and osteoarthritis in both legs. The Claimant requires assistance with hard to reach areas, and more specifically, in and under the folds of her skin. The Claimant testified that she requires assistance with transferring in and out of the tub/shower unit as she is scared of falling and has difficulty lifting her left leg. The WVM RN documented on the PAS that the Claimant reported needing situational assistance with getting in and out of the tub and noted that the Claimant required assistance with lifting her left leg. While there is some inconsistency regarding the Claimant's ability to wash herself [between the PAS and testimony received at the hearing], the Claimant's medical diagnoses are consistent with the functional limitations noted. The evidence clearly demonstrates that the Claimant requires assistance with washing herself and physical assistance with getting in and out of the tub/shower unit. Based on the evidence, the Claimant is demonstrating a deficit in bathing.

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 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 501.3.2 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 states that an individual must have five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS completed by WVMI in May 2009 – Vacate a Building, Grooming, Dressing and Transferring.
- 3) The evidence submitted at the hearing identifies one additional function deficit in the area of bathing.
- 4) Whereas the Claimant demonstrates five (5) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program is therefore established. The Claimant's LOC determination shall include the point(s) awarded from this decision.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying the Claimant's application for benefits and services through the Medicaid, 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 23rd Day of October, 2009.

**Thomas E. Arnett
State Hearing Officer**