



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN
Cabinet Secretary

November 17, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 28, 2009. Your hearing request was based on the Department of Health and Human Resources' termination of your medical eligibility 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 continue to meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-1729

**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 October 28, 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 28, 2009 on a timely appeal filed August 14, 2009.

It should be noted here that the Claimant's benefits have been continued pending the outcome of this hearing.

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:

-----, representing herself
-----, Claimant's witness

Cecilia Brown, BOSS, representing the Department
Stephanie Schiefer, RN, WVMI, Department witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 proposal to terminate the Claimant's eligibility for benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual Section 501, three (3) pages
- D-2 Medical Necessity Evaluation Request form dated May 18, 2009
- D-3 Pre-Admission Screening (PAS) completed July 27, 2009
- D-4 Notice of Potential Denial dated July 30, 2009
- D-5 Denial dated August 14, 2009, two (2) pages

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a reevaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of July 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Stephanie Schiefer, completed a medical assessment (D-2) on July 27, 2009 in the Claimant's home and determined that she no longer meets the medical eligibility criteria for the program. The nurse testified that the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, dressing, continence, and vacating a building.
- 3) The Department sent the Claimant's Case Management Agency, Coordinating Council for Independent Living, a Notice of Potential Denial (D-4) on July 30, 2009. The form explained that if the Claimant believed she had additional information regarding her medical condition that was not considered, it should be submitted within the next two weeks to WVMI. No additional information was submitted during this timeframe.
- 4) The Department sent the Claimant a Notice of Denial (D-5) dated August 14, 2009, and the Claimant requested a hearing on August 20, 2009.

- 5) The Claimant contends that additional deficits should be awarded in the areas of grooming and walking.

In the area of Grooming the Claimant was rated as “self/prompting” meaning she can perform this activity by herself or with supervision. The WVMi nurse recorded the following on the PAS:

Does own mouth care, hair care, trims own fingernails and toenails, added dr. usually trims toenails. 7/30/09 12:00 pc to member to clarify hair washing, states she does this herself in the shower, stated “there’s nothing wrong w/my arms”.

The Claimant’s husband, -----, stated that the Claimant is able to do some grooming without assistance. He stated the neighbor usually trims her toe nails for her because she is unsteady due to spine deterioration. The Claimant stated that sometimes she can do it herself and sometimes she needs someone else to do it. Also, recordings in regard to dressing on the PAS indicate that the Claimant needs help with putting on shoes and sock due to difficulty reaching down to put them on. This is consistent with the Claimant’s testimony in regard to grooming needs.

In the area of Walking the Claimant was rated as “supervised/assistive device”, meaning she can walk with an assistive device such as a cane and/or with supervision. The WVMi nurse recorded the following on the PAS:

Observed ambulate w/steady gait, unassisted, says sometimes uses walls/furniture for support.

The Claimant’s husband stated she is progressively getting worse and will hold on to him when they walk. He added she fell in May 2009 trying to get up out of her chair.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

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 501.3.1.1 states in pertinent part:

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 (D-1) MEDICAL CRITERIA states in pertinent part:

An individual must have five (5) deficits on the Pre Admission Screening (PAS), Attachment 14, 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 B (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 (ADW) Program.
- 2) Policy also stipulates that in the event the Department finds the Claimant to be ineligible at the time of reevaluation, they must send the member (Claimant), the referring physician, and the member's representative, if applicable, a Potential Denial letter, which includes the reason for

the potential denial, listing the areas in which deficiencies were found and notice that the medical eligibility standard has not been met. The letter also is to include a copy of the PAS and ADW policy. The member (Claimant) is to be afforded two weeks to submit supplemental medical information to be considered.

- 3) The Department properly sent the Claimant a Potential Denial Notice (D-4) on July 30, 2009. No additional information was submitted during the allotted two week timeframe.
- 4) The Claimant received four (4) deficits in June 2009 in conjunction with her Aged/Disabled Waiver Program reevaluation in the areas of bathing, dressing, continence, and vacating a building.
- 5) The totality of the evidence is sufficient to show that the Claimant needs physical assistance with grooming and she is therefore awarded one (1) deficit in this area, bringing her total deficits to five (5). The written narrative in the PAS supports that she cannot reach down to put on shoes or socks. This statement is consistent with the Claimant's husband's testimony in regard to her need for physical assistance with cutting her toe nails. The Claimant also reported that her physician sometimes does this for her.
- 6) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional one (1) deficit awarded for Grooming is to also be considered by the Department when determining level of care for the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of November, 2009

**Cheryl Henson
State Hearing Officer**