



**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**

October 20, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 15, 2009. Your hearing request was based on the Department of Health and Human Resources' denial 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 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 deny 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

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

-----,

Claimant,

v.

Action Number: 09-BOR-1820

**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 15, 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 15, 2009 on a timely appeal filed May 13, 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, Representing herself
-----, Claimant's witness
-----, Claimant's witness
-----, Claimant's witness

Cecilia Brown, BOSS
Angie Hill, RN, WVMI, Department witness

It should be noted that the hearing was conducted via conference call.

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 deny the Claimant's application 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 Medical Necessity Evaluation Request form dated January 26, 2009
- D-2 Pre-Admission Screening (PAS) assessment completed March 9, 2009
- D-3 Letter from Claimant date stamped March 17, 2009
- D-4 Notice of Potential Denial dated March 10, 2009
- D-5 Notice of Denial dated April 7, 2009
- D-6 Aged/Disabled Waiver Services Manual Section 501
- D-7 Prescription from [REDACTED] PC dated March 12, 2009
- D-8 Prescription from [REDACTED] D.O. dated March 12, 2009

Claimant's Exhibits:

- C-1 Page from Claimant's medical records showing Medications/Past Medical History dated May 11, 2009
- C-2 Prescription from [REDACTED] Primary Care dated May 11, 2009 for Duoderm compression dressing
- C-3 Prescription from [REDACTED] Primary Care dated May 11, 2009 for adult diapers
- C-4 [REDACTED] Primary Care Prescription dated May 11, 2009 for wheelchair
- C-5 Prescription from [REDACTED] PC dated March 12, 2009 (See D-7)

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of March 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Angie Hill, completed a medical assessment (D-2) on March 9, 2009 in the Claimant's home and determined that she does not meet 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 grooming, dressing, and vacating a building.

- 3) The Department sent the Claimant's listed physician, Dr. [REDACTED] a Notice of Potential Denial (D-4) on March 10, 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.
- 4) The Department acknowledged receiving information (D-7, D-8) from the Claimant on March 12, 2009. The additional information provided by the Claimant (D-7, D-8) within the two week timeframe allowed by the Department included a prescription (D-7) for Home Health Physical Therapy designed to help with strengthening and gait, with weight bearing as tolerated for her lower extremities. The prescription (D-7) also included a diagnosis of osteoarthritis. Also provided was information written on a prescription pad dated March 12, 2009 (D-8) from Dr. [REDACTED] D. O. which states:

Patient is unable to walk without a cane &/or assistance
Assistance with meds.

The Department also acknowledged receiving a letter from the Claimant (D-3) in which the Claimant states that she does require physical assistance with walking, and needs physical help to take her medications.

The Department determined that the additional information did not change the Claimant's rating of four (4) deficits. The WVMI nurse explained that during the completion of the PAS, the Claimant was rated as being able to walk with "supervised/assistive device"; in the area of medication administration the Claimant was rated as being able to administer her own medication with no assistance needed. The nurse indicated that the additional information (D-7, D-8) might have allowed her to consider that the Claimant needed assistance with setting up her medication; however, the Claimant would need to be completely unable to assist with her medicine in order to receive a deficit in that area. WVMI determined the Claimant was able to take her own medications after they were given to her and thus no deficit was awarded. No deficit was awarded for walking, and the nurse did not explain her reasoning in this area relative to the new information.

- 5) The Department sent the Claimant a Notice of Denial dated April 7, 2009, and the Claimant requested a hearing on May 13, 2009
- 6) The Claimant contends that additional deficits should be awarded in the areas of Bladder Incontinence, Walking, Transferring and Decubitus.

In the area of Bladder Incontinence the Claimant was rated as "Occasionally Incontinent". The WVMI nurse recorded the following on the PAS:

APPLICANT REPORTS SHE HAS ACCIDENTS WITH HER
BLADDER SOMETIMES AND IS UNABLE TO GIVE A SPECIFIC
NUMBER OF TIMES BUT STATES IT HAPPENS LESS THEN
[SIC] 3 X WEEK. DENIES ANY DEPENDS OR PADS.

The Claimant testified that she didn't realize that "leaking" was actually incontinence, and thought that she had to mess her clothes completely for it to be considered an episode of incontinence. The Claimant's friend, -----, stated that she stays with the

Claimant often and does her laundry. She noted that she has bladder accidents daily. The Claimant's daughter, ----, testified that part of the problem with the incontinence is that the Claimant must walk about twenty steps to the bathroom. The Claimant is very slow in her movements due to pain and often can't get to the bathroom in time.

In the area of Walking the Claimant was rated as needing supervision or assistive devices. The WVMi nurse recorded the following on the PAS:

RN OBSERVED APPLICANT WALK A FEW STEPS AND SHE USED HER QUAD CANE TO ASSIST AND WALKS VERY SLOW. APPLICANT HAS STEPS TO THE UPSTAIRS AND HAS A HANDRAIL, SHE REPORTS SHE USES HER CANE AND THE HANDRAIL TO WALK UP AND DOWN THE STEPS. NO REPORT OF APPLICANT NEEDING ONE PERSON ASSIST WITH TRANSFERS OR WALKING IN THE HOME. 4/6/09 – RECEIVED AND REVIEWED ADDITIONAL INFORMATION, REVIEWED A LETTER WRITTEN FROM THE APPLICANT STATING SHE IS UNABLE TO WALK WITH JUST HER CANE AND THAT SHE NEEDS PHYSICAL ASSIST ON THE OTHER SIDE OR SHE WILL FALL. SHE STATES IT WAS NOT DISCUSSED [sic] WITH RN AND THAT SHE ONLY STOOD. SHE STATES WHEN SHE IS ALONE TO USE THE RESTROOM SHE USES THE WALL AND CANE AND IS STILL AFRAID OF FALLING. RN DID ASK TO OBSERVE APPLICANT TRANSFER AND WALK AS STATED IN THE PAS AND SHE DID TRANSFER AS STATED ABOVE UNDER NURSES COMMENTS AND SHE SCOOTED HERSELF TO THE EDGE AND THEN USED THE ARMS OF THE CHAIR TO PUSH HERSELF UP AND STOOD SLOWLY. APPLICANT DID TAKE A FEW STEPS WITH THE ASSIST OF HER QUAD CAN. RN DID NOT ASK APPLICANT TO WALK A LONG DISTANCE D/T APPLICANT WAS COMPLAINING OF HAVING A LOT OF PAIN. APPLICANT DID NOT REPORT AT ANYTIME DURING THE ASSESSMENT THAT SHE NEEDED HANDS ON PHYSICAL ASSIST WITH ANY TRANSFERS OR WALKING INSIDE THE HOME.

The Claimant's daughter testified that the Claimant cannot go upstairs to bed by herself. She stated that when she does climb the stairs someone must physically hold on to her, and when she goes down the stairs someone must get in front of her and have her hold on to them when necessary.

In the area of Transferring, the Claimant was rated as needing supervised assistive device. The WVMi nurse recorded the following on the PAS:

RN ASKED TO OBSERVE APPLICANT [sic] TRANSFER AND WALK. APPLICANT PUT OUT HER CIGARETTE AND USED THE ARMS OF THE CHAIR TO SCOOT HERSELF TO THE EDGE OF THE CHAIR AND THEN PUSHED HERSELF UP AND STOOD VERY SLOWLY AND STATES SHE HAS TO STAND A FEW MINUTES D/T SHE STATES SHE HAS TO GET HER BALANCE

HOLDING ONTO THE CANE. APPLICANT REPORTS SHE HAS A REGULAR BED AND STATES IT HURTS HER TO GET OUT AND SHE HAS TO USE THE BED AND CANE TO ASSIST OUT OF THE BED AND STATES TO GET IN SHE HAS TO USE HER RT KNEE AND FLOP HERSELF INTO THE BED. REGULAR COMMODE AND STATES SHE USES THE VANITY AND CANE TO ASSIST ON AND OFF.

The Claimant testified that she needs a person to help her get out of her chair.

In the area of Decubitus the Claimant was rated as not having a decubitus at the time of the PAS assessment. The Claimant testified that she believes now that she had a decubitus on the date of the assessment. She added that she had soreness in an area that was later diagnosed as a decubitus on May 11, 2009. The WVM nurse testified that a decubitus must be at stage three (3) or four (4) in order to qualify for a deficit, which means it would have to be much more severe in order to qualify.

- 7) The Claimant submitted evidence dated May 11, 2009 to show (C-1) her listed medications and past medical history. The past medical history includes Bipolar Affective Disorder with Mania, Decubitus Ulcer, Diabetes Mellitus, Type II, Hypertension, Renovascular, and Urinary Incontinence; however, there is no date of onset listed for any of the listed illnesses.
- 8) The Claimant submitted evidence dated May 11, 2009 (C-2, C-3, C-4) to show she has been prescribed medicine for decubitus, adult diapers, and a wheelchair. This information was not available for review at the time of the PAS assessment.
- 9) 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.

- 10) 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.

- 11) 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 March 10, 2009. The Claimant submitted a letter (D-3) to the Department dated March 17, 2009, as well as two prescriptions dated March 12, 2009 (D-7, D-8) from her physician. This additional medical information was submitted timely.
- 4) The Claimant received four (4) deficits in March 2009 in conjunction with her Aged/Disabled Waiver Program initial evaluation in the areas of bathing, grooming, dressing, and vacating a building.
- 5) In order to receive a deficit in Walking the Claimant would need to require at least one person physical assistance in her home. In the Claimant's letter (D-3), she clearly states that she is in need of physical assistance with walking. The Claimant's physician also clearly states (D-8) that she is unable to walk without a cane and/or assistance. The Claimant's witness's testimony also supports that the Claimant requires one-person assistance with walking at times. The WVM nurse documented that the Claimant only walked a few steps due to pain and that she has difficulty navigating the stairwell. The Claimant must navigate a full flight of stairs in order to get to her bedroom.
- 6) In order to receive a deficit in Bladder Incontinence the Claimant would need to be incontinent at least three (3) times weekly. The Claimant clearly reported during the PAS that she was incontinent less than three times weekly, and although the Claimant stated during the hearing that she was confused about what is actually considered incontinence, no substantive additional information was provided to support a deficit in this area.
- 7) In order to receive a deficit for Transferring the Claimant would need to require at least one-person physical assistance in her home. Although evidence was sufficient to show that the Claimant has weakness in her extremities, no substantive evidence was provided to support a deficit in this area.
- 8) In order to receive a deficit in the area of Decubitus, the Claimant would need to have exhibited a Class III or Class IV Decubitus at the time of the PAS assessment. The Claimant's testimony supports that she had soreness at the time, but no additional evidence was provided to support that she had developed a Class III or IV Decubitus at the time of the assessment.
- 9) The Department acknowledged during the hearing that enough evidence had been provided to consider that the Claimant needed assistance with setting up her medications. The Department had originally determined that the Claimant needed no assistance in this area. The Claimant agreed with this assessment.
- 10) The totality of the written evidence and verbal testimony supports that the Claimant needs one-person physical assistance with walking; therefore, an additional one (1) deficit is being awarded in this area. This one (1) deficit, when added to the Claimant's already awarded four (4) deficits, brings the total deficits for her to five (5).
- 11) 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 deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program based on its finding that the Claimant did not need physical assistance with walking. The additional one (1) deficit awarded for Walking is to also be considered by the Department when determining level of care for the Claimant. The Department will also consider that the Claimant needs assistance with setting up her medications when assessing level of care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of October, 2009

**Cheryl Henson
State Hearing Officer**