



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 27, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 10, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) 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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five (5) deficits on the Pre-Admission Screening (PAS) form to qualify medically.

The information submitted at your hearing revealed that the Department should have awarded five (5) deficits instead of four (4), and approved medical eligibility for the ADW program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny benefits under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
-----, RN, WVM

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

-----,

Claimant,

v.

Action Number: 08-BOR-2645

**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 April 27, 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 March 10, 2009 on a timely appeal, filed December 11, 2008.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled Aged and Disabled Waiver is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

-----, Claimant
-----, RN, Berkeley Senior Services
-----, RN, WVMi
Kay Ikerd, RN, BoSS

All persons participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny medical eligibility for the Medicaid Aged and Disabled Waiver Program to the Claimant.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Policy Manual §501.3.2 – Medical Criteria
- D-2 Pre-Admission Screening (PAS) form, dated September 9, 2008
- D-3 Notice of Potential Denial dated September 16, 2008; Notice of Denial dated October 1, 2008

VII. FINDINGS OF FACT:

- 1) Claimant is a sixty-nine (69) year old female applicant for Medicaid Aged and Disabled Waiver (ADW) Services. The Department's WVMi nurse completed a Pre-Admission Screening (PAS) of the Claimant to evaluate her medical eligibility for the program on September 9, 2008 (Exhibit D-2). The Department issued the Claimant a notice of potential denial on September 16, 2008, and a denial notice on October 1, 2008 (Exhibit D-3). The notice advised the Claimant that deficits were only awarded in four (4) health areas, and that a minimum of five (5) deficits are required for medical eligibility. Deficits were awarded in the areas of *eating, bathing, dressing, and grooming*.
- 2) The Claimant and her witness introduced issues in the areas of *ability to vacate in an emergency and medication administration*.

- 3) Policy from the Aged and Disabled Home and Community-Based Services Waiver Policy Manual §501.3.2 (Exhibit D-1) states:

501.3.2 MEDICAL CRITERIA

An individual must have five (5) deficits on the Pre-Admission Screening Form (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.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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.	

All of the above medical criteria information also applies to Personal Options.

- 4) With regard to the area of *ability to vacate in an emergency*, the Claimant indicated that she falls, and could not vacate if she were to fall during an emergency. -----, the Claimant's nurse through [REDACTED] Senior Services, testified that the Claimant would have trouble vacating quickly due to shortness of breath related to her diagnosis of Chronic Obstructive Pulmonary Disease (COPD). She further noted that the Claimant has a history of compression fractures and balance and gait problems, and that her couch blocks a sliding glass door. Under cross-examination, the Claimant testified that she now has exit access via the sliding glass door.

The WVMi nurse testified that on the day of the PAS, the Claimant answered the door without any observed shortness of breath. She noted a flat entry to the home, and an estimated distance of fifteen (15) to twenty (20) feet from the front door to the couch, where the Claimant reported she sleeps. She reported that on the day of the PAS, the Claimant was asked how many times she fell to the floor during the previous year, and responded that there were no falls to the floor.

- 5) With regard to *medication administration*, -----, the Claimant's nurse through [REDACTED] Senior Services, testified that the Claimant could not administer her Acular 0.4% eye drops due to her diagnosis of essential tremor. The Claimant testified that she has tried, but gets the eye drops on her face and not in her eyes. The Claimant also indicated that her granddaughter administers the eye drops for her when she is available, and otherwise she does without.

The WVMi nurse noted that on the day of the PAS, the Claimant reported that she was independent with regard to administering medications, and made no mention of the eye drops. The Claimant did not recall any reason for not advising the WVMi nurse of this at the time of the PAS. The diagnosis of essential tremor is listed on the PAS (Exhibit D-2) under item #37, "Other Medical Conditions Requiring Services."

VIII. CONCLUSIONS OF LAW:

- 1) The Aged and Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged and Disabled Waiver program. The WVMi nurse determined, at the time of the PAS, that the Claimant had only four (4) qualifying deficits in the areas of *eating, bathing, dressing, and grooming*.
- 2) The testimony regarding *ability to vacate in an emergency* confirmed that the Claimant answered the door on the day of the PAS without shortness of breath, and indicated no serious falls over the prior year. Testimony of the Claimant's problems that affect this area must be considered in terms of their frequency. No additional deficit is warranted in this area.

- 3) Testimony and evidence regarding the area of *medication administration* revealed that the Claimant had a diagnosis of essential tremor noted at the time of the PAS, the Claimant has tried and failed to administer her prescribed eye drops, and that the Claimant does without the prescribed eye drops when a family member is unable to administer them for her. The Claimant should have been awarded a deficit in this area.
- 4) With five (5) deficits, the Claimant has met medical eligibility for Medicaid Aged and Disabled Waiver Services, and the action of the Department to deny these services was incorrect.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny Medicaid Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility. It is ruled that the Department award a fifth deficit and approve services to the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2009.

**Todd Thornton
State Hearing Officer**