



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 7, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 24, 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 do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny your 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-819

**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 June 24, 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 June 24, 2009 on a timely appeal filed February 24, 2009.

It should be noted this hearing was previously scheduled for April 21, 2009 and May 13, 2009, but was continued at the Claimant's request.

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 sister
-----, Claimant's Nurse, Pride

Brian Holstein, BOSS
Michelle Wiley, WVMH

It should be noted that the hearing was conducted telephonically by LEADERPHONE.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its proposal to deny 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
- D-2 Pre-Admission Screening (PAS) assessment completed January 14, 2009
- D-3 Notice of Denial dated February 4, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation for the Title XIX Aged and Disabled Waiver Program during the month of January 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on January 14, 2009 and determined that the Claimant does not meet the medical eligibility criteria for the program. The nurse testified the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, grooming, and dressing.
- 3) The Department sent the Claimant a Notice of Denial (D-3) on February 4, 2009. The Claimant requested a hearing on February 24, 2009.
- 4) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Orientation: which is under Functional Abilities. The Claimant was rated as "oriented". The WVMI nurse recorded the following on the PAS:

During the visit he was alert to person, place, and time during the visit.

Says that he has confusion at times. Was assessed as being oriented X3 during the visit.

The Claimant's witnesses testified that he is intermittently disoriented. He has trouble understanding directions. He will call them on the telephone but has difficulty explaining what he is calling about. He has trouble with the "present. The Claimant would need to be "totally disoriented or comatose" in order to receive a deficit.

Vacating a Building in an Emergency: which is under Functional Abilities. The Claimant was rated as "with supervision". The WVMi nurse recorded the following on the PAS:

He sleeps in the living room in his bed. There is an exit in the living room to the front porch. There are 2-3 steps on the front porch with no handrails. He says that if there was an emergency in the home, he could vacate the home himself. Based on his ability to stand and walk during the visit, was assessed as requiring supervision with vacating.

The Claimant's witnesses testified that when he is asleep he is hard to wake up due to medical problems. They indicated he would need hands on assistance to wake him from a sleep. He passes out due to diabetes. The door is locked and has to be broken down. He sleeps a lot due to medical problems.

Medication Administration: which is under Functional Abilities. The Claimant was rated as "with prompting/supervision" in this area. The WVMi nurse recorded the following on the PAS:

He says that he gets his medications out of the bottles himself. Says that he does forget to take them on occasion. He has no one to remind him to take medications. Was assessed as requiring prompting/supervision with medications.

The Claimant's witnesses testified that he cannot read the bottle, and when you try to explain things he gets confused. He is basically blind. He takes medicine by color and size. He is not taking his medicine correctly, and takes more than he is supposed to have.

- 5) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1)- Program Eligibility for Client states in pertinent part:

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.

- 6) 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 members are medically eligible based on current and accurate evaluations.

B. Each applicant/member 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.

7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 (D-1) 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 Program.

- 2) The Claimant received three (3) deficits in January 2009 in conjunction with her Aged/Disabled Waiver Program initial evaluation in the areas of bathing, grooming, and dressing.
- 3) The totality of the evidence and testimony presented during this hearing support the finding of one (1) additional deficit in the area of vacating a building in an emergency. The Claimant clearly has issues with his illness that affect his ability to hear instructions at certain times. In light of this fact, the Claimant would require hands on assistance at times in order to evacuate a building during an emergency. The Claimant has not provided convincing evidence to support deficits in the other areas contested.
- 4) The required five (5) deficits have not 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 **uphold** the Agency's proposal to deny the Claimant's medical eligibility under the 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 7th Day of July, 2009

**Cheryl Henson
State Hearing Officer**