



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

September 23, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 9, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical eligibility under the Aged and 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 and Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals that you do not meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, [REDACTED] [REDACTED] WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-1535

**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 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 at the Logan County office of the WV Department of Health and Human Resources, Logan, WV, with Department representatives appearing via telephone conference call on September 9, 2011, on a timely appeal filed June 28, 2011.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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
-----, [REDACTED] Claimant's Representative
-----, Social Worker, Claimant's Witness
-----, Claimant's Witness

Sarah Birckhead, WV Bureau of Senior Services, Department's Representative
Lisa Goodall, RN, West Virginia Medical Institute, Department's Witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening conducted on June 1, 2011.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Section 501.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.3.
- D-2 Pre-Admission Screening (PAS) assessment conducted on June 1, 2011.
- D-3 Potential denial letter from APS Healthcare, dated June 2, 2011.
- D-4 Denial letter from APS Healthcare, dated June 17, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of his continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in his home on June 1, 2011. (Exhibit D-2.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3.2 (Exhibit 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: (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.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-4) on June 1, 2011 in the Claimant's home. She stated that Claimant, his caregiver and she were the only persons present. She added that she assessed Claimant with four (4) deficits on the PAS, for vacating a building in the event of an emergency, grooming, dressing and continence, and therefore he did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department sent the Claimant a Notice of Potential Denial dated June 2, 2011. (Exhibit D-3.) The notice was addressed to Claimant and mailed to -----, -----, Claimant's mailing address at that time. This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMI within the next 2 weeks." The June 1 PAS does not indicate that the Department received any additional medical information from Claimant's physician. The Department sent a Notice of Termination/Denial on June 17, 2011. (Exhibit D-4.)

- 5) Claimant's representative asserted that Claimant should have received an additional deficit in the area of eating. The WVMI nurse rated the Claimant at a Level 1, "Self/Prompting," for this functional ability. In the "Nurses Overall Comments" section of the PAS, the Nurse Reviewer has written, "[Claimant] has strong and equal hand grips and admits he is able to feed himself [without] difficulty. [Homemaker] prepares meals for him." Claimant's representative asserted that on the PAS, the Nurse Reviewer did not record if she asked Claimant or homemaker if his food trays were prepared for him or if the homemaker had to cut up his meats. She stated that because the Reviewer did not ask these questions, the June 1, 2011 PAS is not a good assessment of Claimant's eating ability. Claimant's representative argued that the June 1, 2011 PAS indicates that Claimant has significant arthritis, and this causes him difficulty in cutting up his food.
- 6) Department's witness, the Nurse Reviewer who conducted the June 1, 2011 PAS, testified that on the day of the PAS, she observed that Claimant was able to hold his arms above his head and place his hands behind his head. She testified that she tested his hand grips and they were equal and "quite firm." She stated that, concerning other functional abilities, he told her he could shave himself and brush his teeth, so she saw no reason to assume he could not cut up his food. She added that the PAS does indicate that Claimant has significant arthritis but she pointed out that on the PAS, Section 20: Health Assessment section, it is written, "Significant Arthritis: [Claimant] reports he has arthritis in his right knee and they have recommended [knee replacement surgery] but he hasn't decided yet."
- 7) Claimant testified that his homemaker cuts up his meats and prepares his food tray. Claimant's witness, his homemaker, also testified that she does this. She testified that on some days his arthritis is worse than others, and when it is not so bad, he can cut up his food. She added that because she cannot predict when his arthritis will and will not be severe, she prepares his food and food tray every day.

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. On his PAS that was performed on June 1, 2011, Claimant was assessed with four (4) deficits.
- 2) The Department was correct in its decision not to assess for a deficit in the areas of eating. The testimony from Claimant and his witnesses did not establish that Claimant needed consistent help in cutting his meats or preparing his food tray.
- 3) Claimant provided no testimony or evidence to support a finding that an additional deficit should have been awarded in the assessment; therefore, 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 Claimant's application to the Aged and Disabled 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 September, 2011.

**Stephen M. Baisden
State Hearing Officer**