



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

Earl Ray Tomblin
Governor

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

October 12, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 11, 2011. 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 no longer meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your July 21, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your medical 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**

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1838

**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 on October 11, 2011.

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 witness
-----, Claimant's witness

Sara Birckhead, Department representative
Melissa Bell, Department's witness

It should be noted that the parties participated in the hearing by 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 terminate the Claimant's medical 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
- D-2 Pre-Admission Screening (PAS) assessment completed July 21, 2011
- D-3 Notice of Potential Denial dated July 22, 2011
- D-4 Notice of Decision dated August 8, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of July 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Melissa Bell, completed a medical assessment (D-2) on July 21, 2011, 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 zero (0) deficits on the Pre-Admission Screening (PAS) assessment.
- 3) The Department sent the Claimant's case management agency, [REDACTED] LLC, a Notice of Potential Denial (D-3) on July 22, 2011. The notice 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 (2) weeks to WVMI. No significant additional information was submitted on behalf of the Claimant, and a final denial notice (D-4) was sent to the Claimant on August 8, 2011. The Claimant requested a hearing on the matter on August 16, 2011.

4) 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.

5) 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.

6) 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: (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.

- 7) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the WVMi nurse explain her findings, the Claimant disagreed with her conclusions, and contends that deficits should be awarded in each of five (5) contested areas which include vacating a building during an emergency, eating, bathing, orientation, and medication administration. The Claimant is required to have five (5) deficits in order to establish medical eligibility for the program.
- 8) In the area of vacating a building in an emergency, the Claimant was rated as being able to vacate the building “independently.” Policy provides that in order to receive a deficit in this area, the Claimant would need to be physically or mentally unable to vacate the building during an emergency. The nurse recorded the following pertinent information during the assessment:

Member ambulated without use of assistive device; member was not short of breath with exertion. Member states she sleeps on couch in front room. Member would be able to vacate home in event of an emergency. Mini Assessment: Member was able to raise bilateral arms above head, member is able to touch head, and member was able to reach behind back. Member was able to touch toes from a seated position and cross bilateral legs. Member has good grip strength bilaterally.

The Claimant’s representative and friend, -----, stated that the Claimant could not get out of her home safely in the event of an emergency. She stated that she has helped the Claimant leave her home on one occasion for an excursion and that the Claimant had great difficulty in leaving her residence. She stated that the Claimant became short of breath and shaky, and that she held onto her during the exit of the building. She added that the Claimant also used a cane. She added that during the past several months the Claimant has only left her home a few times due to her difficulty with this process. The Claimant also testified that she sometimes has chest pain.

- 9) In the area of eating, the Claimant was assessed as being able to perform this activity with “prompting and supervision.” The WVMI nurse recording the following pertinent information on the PAS:

Member states she prepares meals, member is able to cut up meals; member is able to feed self.

Ms. Davis testified that the Claimant cannot cut up some of her foods such as chicken, beef, or pork chops.

- 10) In the area of bathing, the Claimant was rated as being able to perform this activity with “prompting and supervision.” The WVMI nurse recorded the following relevant information during the PAS assessment:

Member reports she takes a shower, member is able to get in/out of shower by self. Member reports she is able to wash all of her body. Member states HM [homemaker] has not had to assist with bathing at this point.

The Claimant stated that she can wash herself from the bathroom sink, and that she misunderstood the nurse’s questions in this area. She added that she does not bathe unless someone is with her, and that someone else must wash her back, legs and body. She stated that she does not recall telling the nurse that she was able to perform these actions by herself.

- 11) In the area of orientation, the Claimant was rated as being “oriented” during the PAS assessment. The WVMI nurse recorded the following relevant information during the PAS assessment:

Member was alert and oriented during assessment. Member was able to state all personal information correctly. Member was able to correctly date consent form. Member reports she becomes forgetful. Member states she is unable to multi-task.

The Claimant stated that sometimes she forgets to take her pills and has to be reminded to take them. She added that sometimes if she is away from her home she believes she would become disoriented. She added that she also repeats herself at times. The WVMI nurse added that in order to be assessed a deficit in this area, an individual would need to be assessed as “totally disoriented. The Claimant conceded that she is not totally disoriented.

- 12) In the area of medication administration, the Claimant was rated as being able to administer her own medications. The WVMI nurse recorded the following relevant information during the PAS assessment:

Medications gathered by member, medication names taken from pill bottles. Medications returned to member. Member states she sets up

pills in pill planner and reports she is able to open pill bottles and place pills in mouth.

The Claimant stated that sometimes she cannot get the pill bottles open without assistance due to carpal tunnel, and that sometimes she takes too much medication.

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. Policy also specifies that in order to receive a deficit in the area of orientation, an individual must be rated as totally disoriented or comatose.
- 2) The Claimant received zero (0) deficits during the July 2011 PAS assessment. She must be assessed five (5) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings she received in five (5) areas; the areas of vacating a building during an emergency, eating, bathing, orientation, and medication administration. In order to be found eligible for the program, she would need to be rated a deficit in each of the five (5) contested areas.
- 3) In the contested area of orientation, the Claimant acknowledged that she is not totally disoriented. The evidence also does not support that she is totally disoriented or comatose. The Claimant was able to interact with the nurse during the assessment without the assistance of another individual. She was able to read and sign consent forms, as well as correctly provide her personal information. Therefore, since the policy requires an individual to be assessed as totally disoriented or comatose in order to award a deficit, it is not possible for her to be awarded a deficit in this area.
- 4) The remaining four (4) contested areas will not be addressed further, as it is not now possible for the Claimant to meet the program requirement of showing five (5) deficits.
- 5) As result of the above conclusions, the Claimant has not established the required five (5) deficits in order to establish medical eligibility for the Aged/Disabled Waiver program.
- 6) The Department was correct in its decision to terminate medical eligibility in the Aged/Disabled Waiver program based on the results of the July 2011 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate 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 12th Day of October, 2011.

**Cheryl Henson
State Hearing Officer**