



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

November 17, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 17, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Medicaid 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed that you do meet the medical eligibility requirements for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to **Reverse** the action of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1992

**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 a timely appeal, filed September 14, 2011.

It should be noted here that the Claimant's benefits under the Aged and Disabled program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program, hereinafter ADW, 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

-----, Attorney-In-Fact, Homemaker Aide

----- Case Manger

----- RN

Presiding at the hearing was Eric L. Phillips , State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department is correct in its proposal to terminate the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening Assessment dated August 16, 2011
- D-3 Notice of Potential Denial dated August 22, 2011
- D-4 Notice of Denial dated August 30, 2011

Claimants' Exhibits:

- C-1 Additional Information submitted from Sandra Harper, Nurse Practitioner on August 24, 2011 and September 7, 2011

VII. FINDINGS OF FACT:

- 1) On August 16, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine his continued eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Teresa McCallister, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. McCallister identified the Claimant's functional deficits as vacating a building, bathing, grooming, and continence.
- 3) On August 22, 2011, the Claimant was issued Exhibit D-3, Notice of Potential Denial. This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual.

Based on your PAS, you have deficiencies in only 4 areas-vacate a building, bathing, grooming, and continence.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding his medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On September 1, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, informing him that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been Terminated/Denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the right to dispute this decision and ask for a hearing.

Reason for decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form), indicated deficiencies in 4 areas-vacating a building, bathing, grooming, and continence.

- 5) The Claimant's representatives contend that additional deficits should have been awarded in the areas of medication administration and orientation. The following address the contested areas:

Medication Administration-----, Homemaker Aide, provided testimony concerning the Claimant's inability to care for himself and cited difficulties that the Claimant was experiencing with a Level 4 skin graft of his heel. -----indicated that the Claimant will not take his medication unless the homemaker administers the medication. [REDACTED] provided Exhibit C-1, Additional Information from [REDACTED] Nurse Practitioner, which was submitted to WVMi on August 24, 2011 and September 7, 2011. This exhibit documents the Claimant's need for assistance with medication administration. Information submitted on August 24, 2011 and documents in pertinent part:

Veteran's caregiver, -----, is to apply Aloe Vesta #3 to Veteran's lower legs and feet daily and prn [sic], everyday, until otherwise notified.

On September 7, 2011, more information from [REDACTED] Nurse Practitioner was submitted to WVMI to clarify the Claimant's need for assistance with medication administration. This exhibit documents in pertinent part:

Veteran's caregiver, ----- has been taking care of the Veteran's wound on his left heel since May 2010 and has been taking care of it daily since that day to the present.

-----stated that the Claimant has attempted to administer the medications to his lower leg, but is unable to do so due to poor judgment. Ms. McCallister stated that she received the additional information on August 24, 2011, in a timely manner, but was unable to utilize the information because it did not come from a physician and the information indicated a change of treatment after the completed assessment.

Policy requires that a deficit is awarded in the area of medication administration when the individual is not capable of administering their own medication. Evidence and testimony presented during the hearing revealed that the Claimant submitted additional information, in a timely manner, which indicated that the Claimant requires assistance when placing medication to his heel. Because the Claimant is unable to administer medication to his wound, an additional deficit **can be** awarded in the contested area.

Orientation-Ms. [REDACTED] testified that the Claimant has been diagnosed with dementia and was evaluated as mentally unable to vacate his home during an emergency. Additional testimony indicated that the Claimant utilizes poor judgment. Ms. McCallister noted in the PAS assessment the following information concerning the Claimant's orientation, "Member demonstrates and verbalizes orientation x3 during visit. No episodes of disorientation reported."

Policy requires that a deficit is awarded in the contested area when the individual is assessed at a Level 3 or higher meaning that the individual is totally disoriented or comatose. Testimony indicated that the Claimant was oriented to person, place, and time during the assessment and showed no signs of disorientation. Therefore, the assessing nurse correctly assessed the Claimant's orientation and an additional deficit cannot be awarded in the contested area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (D-1) - Program Eligibility for Client:

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.

7) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – 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.

8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 Medical Criteria: An individual must have five (5) deficits on the Pre-Admission Screening (PAS) 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that in order to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five health areas on the Pre-Admission Screening assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of vacating a building, bathing, grooming, and continence.
- 3) Testimony and evidence presented during the hearing revealed an additional deficit in the area of medication administration.
- 4) The Claimant's total number of deficits awarded is five; therefore, the Department was incorrect in its decision to terminate the Claimant's Aged and Disabled Waiver benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate the Claimant's Aged and Disabled Waiver benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of November , 2011.

Eric L. Phillips
State Hearing Officer