



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26555

Earl Ray Tomblin
Governor

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

December 21, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 16, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through 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/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state that 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 the hearing fails to demonstrate that you require a sufficient number of services, and the degree of care, to medically qualify for benefits and services provided through the Medicaid Aged/Disabled Home and Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

IN RE: -----,

Claimant,

v.

Action Number: 11-BOR-2162

**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 December 16, 2011 on a timely appeal filed September 22, 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

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department's representative
Debbie Sickles, RN, West Virginia Medical Institute (WVMI), Department's witness

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to deny the Claimant's application for benefits and services through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 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 on July 7, 2011

D-3 Notice of Potential Denial dated July 8, 2011

D-3a Medical Conditions/Symptoms and symptoms verification provided by [REDACTED]
(July 8, 2011)

D-3b Correspondence from the Claimant dated July 20, 2011

D-4 Notice of Decision dated July 26, 2011

VII. FINDINGS OF FACT:

- 1) On July 7, 2011, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program (Exhibit D-2, Pre-Admission Screening (PAS) form).
- 2) On or about July 8, 2011, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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, Chapter 501.5.1.1.

Based on your PAS you have deficiencies in only 3 areas – Bathing, Grooming and Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made, if received within two weeks. Exhibits D-3a and D-3b were provided timely and considered in the Claimant's eligibility determination.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Notice dated July 26, 2011 (Exhibit D-4). This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) recently conducted an assessment of your medical eligibility for the Aged and Disabled Waiver Program. You have been determined [sic] medically ineligible for Waiver services.

This decision results in the denial or termination of your Waiver services. This is based on policy in the Medicaid program regulations, Aged and Disabled Waiver Policy Manual, Section 501.5.1.1 and the Pre-Admission Screening (PAS) Form (attached).

REASON FOR DECISION: Medical eligibility for the **Aged and Disabled Waiver Program** requires deficits in at least **five (5)** of the health areas listed below – Bathing, Grooming and Continence.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in **three (3)** areas. Because you have less than **five (5)** deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) deficits (Bathing, Grooming and Continence), but indicated the medical assessment completed in July 2011 fails to identify five (5) functional deficits as required by ADW Program medical eligibility criteria.
- 5) The Claimant contends that he should have been found medically eligible as he is also demonstrating functional deficits in eating, dressing and vacating in the event of an emergency. The following will address the contested functional deficits:

Dressing – The Claimant contends that he requires assistance putting on his socks. Debbie Sickles, RN, WVMI, testified that when she completed the assessment, the Claimant denied requiring any assistance with dressing. RN Sickles noted in her assessment (Exhibit D-2, Page 6) that the Claimant reported he uses an assistive device to help him put on his socks and that he experiences shortness of breath when putting on his shoes. The Claimant reported that he has been fitted with nylon/compression socks since the assessment and he is unable to put them on without assistance. While the Claimant's ability to dress may have changed since the assessment, the evidence demonstrates that RN Sickles' evaluation of dressing is consistent with the Claimant's functional ability at the time of the assessment. A deficit cannot be awarded in dressing.

Eating – The Claimant reported that he is unable to prepare his meals because he cannot stand for long periods. The Department noted that pursuant to policy, only the ability to eat (fork/spoon to mouth, cutting food, etc...), not meal preparation, is considered in the establishment of a deficit for eating.

Vacating – The Claimant purported that he has had hip and femur replacement surgery, and that his ability to ambulate has deteriorated since the assessment. The Claimant noted that while he is able to walk with an assistive device (cane/walker), he falls a lot and could not exit his home in the event of an emergency. In Exhibit D-2, RN Sickles noted that the Claimant reported he used a cane and/or walker to ambulate at the time of the assessment, but documented the Claimant got up several times during her visit and walked without an assistive device. The evidence indicates that while the Claimant’s ability to ambulate may have deteriorated, he was physically able to vacate when the July 2011 assessment was completed.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 – Member Eligibility:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be discharged or transferred from a nursing home in any county of the state, or in another state, as long as his/her permanent residence is in West Virginia.
- C. Be approved as medically eligible for nursing home level of care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the Social Security Administration (SSA), if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to nursing home care.

Even if an individual is medically and financially eligible, a slot must be available for him/her to participate in the program.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 – states that 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 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.

8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1
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 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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. This is the same level of care that is required to qualify medically for nursing home services.
- 2) The evidence reveals that the Claimant was awarded three (3) deficits on a PAS completed by WVMI in July 2011 – Bathing, Grooming and Continence.
- 3) Evidence submitted at the hearing fails to confirm the Claimant was demonstrating any additional deficits at the time the assessment was completed.

- 4) Whereas the Claimant demonstrated only three (3) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

X. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's application for benefits and services through the Medicaid, 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 _____ Day of December, 2011.

**Thomas E. Arnett
State Hearing Officer
Member, State Board of Review**