



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

December 19, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 13, 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 terminate your participation in 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] Huntington, WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2177

**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 held at the WV DHHR, Mingo County Office in Williamson, WV, with Department's representative and witness and one witness for Claimant appearing by telephone conference call on December 13, 2011, on a timely appeal filed September 27, 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 Witness

-----, Claimant's Mother and Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Brenda Myers, 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 (PAS) conducted on August 20, 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 August 20, 2011.
- D-3 Potential denial letter from APS Healthcare, dated September 7, 2011.
- D-4 Denial letter from APS Healthcare, dated September 21, 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 her continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in her home on August 20, 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-2) on August 20, 2011 in the Claimant's home. She stated that the Claimant, her mother 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, bathing, dressing and grooming, and therefore she did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department sent the Claimant and Claimant's Case Management Agency a Notice of Potential Denial dated September 7, 2011. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WMI within the next 2 weeks." The PAS does not indicate that the Department received any

additional medical information. The Department sent a Notice of Termination /Denial on September 21, 2011. (Exhibit D-4.)

- 5) Claimant asserted that she should have received additional deficits in the areas of transferring, walking and wheeling.
- 6) **Transferring:** The WVMi nurse rated Claimant at Level 2, "Supervised/assistive device," and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] sleeps in a regular bed and states she sits on edge of bed and uses arms to scoot herself up in bed and has to have mattress that is not too high. She states she uses the night stand and then the wall to steady herself as she gets out of bed. She uses furniture to help steady herself when transferring from a chair or recliner and states she uses the door knob on the bathroom door to hold onto as she transfers off the toilet." Claimant testified that she did not know if the word 'transferring' referred to getting out of a vehicle and into her home or needing assistance inside the home. Department's witness testified that the policy refers to a person's ability to transfer from a seated or prone position to a standing position, or vice versa, inside the home. She added that Claimant reported during the PAS she was able to transfer in the home by holding onto furniture, counter-tops and people's hands.
- 7) **Walking:** The WVMi nurse rated the Claimant at a Level 2, "Supervised/assistive device," and wrote in the "Nurse's overall comments" section, "[Claimant] uses walls and furniture as she ambulates in the home. She has a walker but mainly just uses it when she leaves the home. She states she arranges furniture so she will walk along the perimeter of each room using the walls, counter tops and then furniture as she walks in the home." Claimant testified that she was assessed with a deficit for this functional ability on her 2010 PAS and she knew her walking had not improved over the past year. Department's representative read into the record the "Nurse's overall comments" section of the 2010 PAS. It reads in part, "[Claimant] says that she has furniture situated in the room so she can hold onto things. She says that if there is too much space between things that she can hold onto, she has to hold someone's hand or use a walker . . . There are areas of her kitchen where she has nothing to hold onto when she walks. She said she requires someone to hold her through these areas because she will fall if she does not have assistance." Department's representative stated that Claimant was rated Level 3, one person assist, for walking in 2010 and was assessed with a deficit. Department's witness testified that in order to assess Claimant with a deficit for walking, Claimant would not have been able to support herself at all, even with a walker. She added that in those areas of Claimant's home where there are no objects to hold, Claimant holds onto people's hands as supportive devices, as opposed to requiring someone to hold her at all times when attempting to walk.
- 8) **Wheeling:** The WVMi nurse rated Claimant at Level 1, "No wheelchair," and wrote, "[Claimant] has a motorized wheelchair but uses it outside and will use it in the yard." Claimant testified that she had a manual wheelchair in the home, which she used in certain situations, such as when her knees were hurting. Department's

witness testified that the manual wheelchair was not mentioned during the PAS. She stated that the only mention of a wheelchair was the motorized wheelchair which Claimant used in her yard. She added that a deficit for wheeling is assessed not just on the fact of having a manual or motorized wheelchair, but on the fact that it is used on a regular basis in the home.

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 her PAS that was performed on August 20, 2011, Claimant obtained four (4) deficits.
- 2) The Department was correct in its decision not to assess a deficit in the area of transferring. Department's witness testified and recorded on the PAS that she observed Claimant transferring with assistive devices such as furniture or counter tops.
- 3) The Department was correct in its decision not to assess a deficit in the area of walking. Department's witness testified and recorded on the PAS that Claimant used supportive devices such as a walker or furniture as she walked in her home. Claimant did not require the full-time assistance of at least one person to assist her in walking.
- 4) The Department was correct in its decision not to assess a deficit in the area of wheeling. Department's witness testified and recorded on the PAS that the only wheelchair she observed Claimant using was one that Claimant used outside her home. Claimant did not testify that a wheelchair is used in her home on a regular basis.
- 5) 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 and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate Claimant's participation in 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 19th Day of December, 2011.

**Stephen M. Baisden
State Hearing Officer**