



**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**

December 22, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 21, 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 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 action of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, Bureau of Senior Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2247

**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 October 13, 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

-----, Claimant's son

----- Case Manager, -----

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 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening Assessment dated September 14, 2011
- D-3 Notice of Potential Denial dated September 15, 2011
- D-4 Notice of Decision dated October 7, 2011
- D-5 Pre-Admission Screening Assessment dated October 4, 2010

VII. FINDINGS OF FACT:

- 1) On September 14, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine her continued eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Debbie Sickles, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Sickles identified the Claimant's functional deficits as bathing, grooming, and continence.
- 3) On September 15, 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 3 areas-bathing, grooming, and continence.

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

- 4) On September 15, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, informing her 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 3 areas-bathing, grooming, and continence.

- 5) The Claimant and her representatives contend that additional deficits should have been awarded in the areas of walking, dressing, and eating. The following addresses the contested areas:

Walking-The Claimant provided testimony indicating that she has difficulty ambulating and must utilize furniture or fixtures in her home to aide in her ambulation. The Claimant indicated that if she did not utilize her furniture, she would experience a fall. Ms. Sickles provided testimony concerning the Claimant's previous year PAS assessment (Exhibit D-5) and how the Claimant demonstrated improvement in the most recent assessment. Ms. Sickles testified that she observed the Claimant ambulate on three different occasions during the assessment and the Claimant did not require hands on assistance at any time. Ms. Sickles assessed the Claimant as a Level 2 Supervised/Assistive device and documented the following in the assessment "[Claimant] 'denies the use of an assistive device. She ambulated 3 times during the assessment and placed her hand on the bedframe [sic] of the bed that was located in the livingroom [sic] during the second time ambulating to the back bedroom. She did not place her hands on any structure during the first and third time of ambulating. She ambulated with a slow but steady gait during the three times I observed her ambulating after the assessment began.'"

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 requires one-person assistance in the home to ambulate. Testimony revealed that the Claimant possessed the ability to ambulate in the home

with the aid of furniture or fixtures and the assessing nurse observed the Claimant ambulate without assistance from other individuals. Therefore, the assessing nurse correctly assessed the Claimant as a Level 2 Supervised/Assistive device and an additional deficit **cannot be** awarded in the contested area.

Eating-The Claimant provided testimony indicating that she has no difficulties in eating, but her son must prepare her at least two meals a day and must watch her while she eats, in order to prevent her from giving her meal to her dog. ----- indicated that his mother has problems with her hands and is unable to feed herself. Ms. Sickles provided testimony concerning the Claimant's previous 2010 assessment and documented the following in the most recent assessment, "[Claimant] is able to feed self, is able to cut up meat or tough foods, son or daughter prepares meals." Ms. Sickles also stated that the Claimant demonstrated a moderate grip on all performed tests during the assessment.

Policy requires that a deficit is awarded in the contested area when the individual is assessed at a Level 2 or higher meaning that the individual requires physical assistance to get nourishment. Policy documents that meal preparation is not consider when determining a deficit. Testimony revealed that the Claimant had no difficulty eating and must be observed while eating to ensure that she consumes her entire meal. Therefore, the assessing nurse correctly assessed the Claimant as Level 1 Self/Prompting, in regards to her eating ability and an additional deficit **cannot be** awarded in the contested area.

Dressing-The Claimant indicated that she has difficulties putting on her clothes and is embarrassed at the fact that she has difficulties in the contested areas. Ms. Sickles reviewed the Claimant's abilities in the contested area from the 2010 assessment and indicated that the Claimant denied requiring assistance in the contested areas in the most recent assessment. Ms. Sickles documented her findings concerning the Claimant's ability to dress in the most recent assessment as, "[Claimant] denied needing assistance with shirt, pants, buttons, socks, and shoes."

Policy requires that a deficit is awarded in the contested area when the individual is assessed at a Level 2 or higher meaning that the individual requires physical assistance to aid in the life area. Testimony indicated that the Claimant denied requiring assistance at the assessment in regards to her ability to dress herself. Based on the information related during the assessment, the assessing nurse correctly assessed the Claimant and an additional deficit **cannot be** awarded in the contested area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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 nursing home level of care.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1– 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 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 bathing, grooming, and continence.
- 3) Testimony and evidence presented during the hearing failed to establish the necessary additional functional deficits as required by policy. The Claimant's total number of deficits awarded is three; therefore, the Department was correct 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 uphold the decision of the Department to terminate the Claimant's medical eligibility for benefits and services under 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 ____ day of December, 2011.

Eric L. Phillips
State Hearing Officer