



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

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

March 22, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held on March 22, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid Aged and Disabled Waiver (ADW) Program services based on a finding of medical ineligibility.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department was correct in its assessment of four deficits and medical ineligibility for the ADW program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, Department Representative  
----- Wiley, West Virginia Medical Institute

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

-----,

**Claimant,**

v.

**Action Number: 11-BOR-354**

**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 concluded on March 22, 2011, 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 March 22, 2011, on a timely appeal, filed December 9, 2010.

All persons offering testimony were placed under oath.

**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

Kay Ikerd, Department Representative

Michelle Wiley, Department's witness

Presiding at the Hearing was Todd Thornton, 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 decision to deny Aged and Disabled Waiver Program services to the Claimant based on a finding of medical ineligibility.

**V. APPLICABLE POLICY:**

Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1** Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2
- D-2** Pre-Admission Screening (PAS) form, dated November 3, 2010
- D-3** Notice of potential denial, dated November 5, 2010
- D-4** Notice of denial, dated November 22, 2010

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a 69-year-old female applicant for Aged and Disabled Waiver (ADW) services. Michelle Wiley, a registered nurse with the West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on November 3, 2010 (Exhibit D-2) to evaluate medical eligibility for the program. The Department issued a potential denial (Exhibit D-3) notice on or about November 5, 2010, and a notice of denial (Exhibit D-4) on or about November 22, 2010. These notices indicated that only four deficits were awarded, and that a minimum of five deficits are required for medical eligibility.
- 2) Kay Ikerd, representative for the Department's Bureau of Senior Services, testified that the applicable policy for this proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services. At §501.3.2, this policy (Exhibit D-1) states, as follows:

**501.3.2 MEDICAL CRITERIA**

An individual must have five (5) deficits on the Pre-Admission Screening Form (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.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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) Ms. Wiley identified the four areas in which deficits were awarded from the November 3, 2010, PAS: *bathing, dressing, and grooming, and vacating the building in the event of an emergency.*
  
- 4) -----, the Claimant's daughter, proposed three additional deficits: *continence of bowel, orientation, and medication administration.* ----- testified that on the day of the PAS assessment, the Claimant may have been oriented, but that there are "plenty of days" that she is not. -----, also the Claimant's daughter, testified that the Claimant is

forgetful. When asked if the Claimant is totally disoriented, both ----- and ----- testified that she is not.

- 5) Because ----- noted that the Claimant is forgetful, she was asked if the Claimant requires physical assistance to take her medication, or if she simply requires prompting or a reminder. ----- and ----- testified that the Claimant is physically capable of taking her medications, but does need to be reminded.
- 6) Ms. Wiley testified that she recorded the following notes, as part of her November 3, 2010 PAS assessment of the Claimant's continence (Exhibit D-2, page 7 of 8):

Continence: Bowel/Bladder: She denies having incontinence of bladder. She then says that if she coughs or sneezes, she will having [sic] some bladder leakage. Says that this occurs normally when she is admitted to the hospital. Says that she has had one episode of bowel incontinence 13-14 years ago after the colon surgery. She denies having incontinence of bowel at this time. Was assessed as being continent of bowel and having occasional bladder incontinence.

----- testified that the Claimant does have episodes of bowel incontinence "many times." When asked how frequently the episodes occur, she testified between one and two times per week. Ms. Ikerd testified that for the Claimant to have been assessed as incontinent of bowel, or a 'Level 3,' she would need to meet the minimum standard of three incontinence episodes weekly. ----- responded that she was only making an estimate of the incontinence frequency.

- 7) The Claimant testified that since the time of the PAS, her medical condition has changed. The Claimant testified that she presently has problems with her legs and her back.

### VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had four qualifying deficits. Three additional deficits were proposed on the Claimant's behalf: *continence of bowel*, *orientation*, and *medication administration*. Testimony on the Claimant's behalf described her as occasionally, but not totally disoriented; the threshold for awarding a deficit in this area is total disorientation. A deficit cannot be awarded for *orientation*.
- 2) Testimony on the Claimant's behalf described her as physically capable of taking her medication, but requiring reminders because of her forgetfulness. This matches the PAS assessment in this area, as requiring 'prompting and supervision.' A deficit cannot be awarded in *medication administration*.

- 3) Testimony on the Claimant's behalf described incontinence of bowel at a frequency of once or twice a week; this is in contrast to reporting on the day of the PAS assessment that she had not had such an episode in thirteen to fourteen years. Even considering possible reasons for concealing the actual frequency of such episodes at the time, the estimate given by the Claimant's daughter is insufficient to be considered incontinent. A deficit cannot be awarded in the area of *bowel continence*.
  
- 4) Without any additional deficits revealed through testimony or evidence, the Department was correct to award four deficits and deny ADW services based on unmet medical eligibility.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Aged and Disabled Waiver services to the Claimant based on failure to meet medical eligibility requirements.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of March, 2011.**

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**Todd Thornton**  
**State Hearing Officer**