



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 24, 2011

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----hearing held on March 24, 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
Kim Sang, West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 11-BOR-584

**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 24, 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 24, 2011, on a timely appeal, filed January 14, 2011.

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's representative and witness

-----, Claimant's representative and witness

Kay Ikerd, Department representative

Kim Sang, 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 9, 2010
- D-4** Letter from [REDACTED] dated November 13, 2010; Letter from [REDACTED] M.D., dated November 12, 2010
- D-5** Notice of denial, dated December 3, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant is a 63-year-old female applicant for Aged and Disabled Waiver (ADW) services. Kim Sang, 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 9, 2010, and a notice of denial (Exhibit D-5) on or about December 3, 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. Sang 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*. Ms. Sang testified that all persons present agreed with the PAS assessment findings at the time, and that the individuals present included the Claimant, her sister -----, and the Claimant's personal care worker.

- 4) -----and -----, the Claimant's sisters, proposed, and testified regarding, two additional deficits: *orientation* and *medication administration*. Additional information (Exhibit D-4) submitted by ----- identifies the same areas of proposed deficits.

- 5) ----- and -----testified that the Claimant is forgetful and disoriented. They indicated that the day of the PAS assessment was a “good day,” and that she is disoriented daily, but not at all times. Ms. Sang testified that the Claimant was oriented on the day of her PAS assessment. Ms. Ikerd testified that the Claimant was assessed as oriented, but even an assessment of intermittent disorientation would not be sufficient for a deficit to be awarded in the area of *orientation*; total disorientation is required for a deficit to be awarded in this area. Ms. Sang made the following notes regarding *orientation* on the day of the assessment:

Orientation: DENIES ANY TROUBLE WITH HER MEMORY ----
SHE IS ABLE TO PAY HER OWN BILLS - - SHE DOES HAVE
SOME FORGETFULNESS - - FORGOT A MD APPT YESTERDAY

-----testified that she pays the Claimant’s bills for her, or has to assist the Claimant with writing the checks.

- 6) ----- and -----testified that the Claimant does not take her medications or use her nebulizer all the time, as she should. They indicated that they remind or prompt the Claimant, but that she still does not comply at times. Ms. Sang testified that she witnessed the Claimant using her nebulizer on the day of the PAS assessment. When asked if the Claimant is physically capable of taking her own medicine, ----- and ----- indicated that she is; ----- testified that the Claimant sometimes has “swallowing deficits,” but nothing about this is documented in the PAS areas regarding either medication administration or eating, or in the physician’s letter submitted as additional documentation. This letter, from [REDACTED] M.D., states in pertinent part (Exhibit D-4, page 2 of 2):

- 1) Patient is not able to take own meds., needs to be supervised (not to be left alone with pills).
- 2) She has been combative, withdrawn, depressed, hallucinations, delusional, disoriented and has had bizarre behavior.
- 3) Very inappropriate social behavior.

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. Two additional deficits were proposed on the Claimant’s behalf: *orientation* and *medication administration*. Testimony and evidence 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 and prompting. A physician's letter recommends supervision of the Claimant's medication administration. This matches the PAS assessment in this area, as requiring prompting and supervision. A deficit cannot be awarded in *medication administration*.
- 3) 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.

**Todd Thornton
State Hearing Officer**