



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

April 27, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law for your hearing held on April 26, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Medicaid Aged/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 as follows: 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 reveals that your medical condition at the time of the assessment failed to demonstrate that you continue to need a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home and Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

cc: Chairman, Board of Review
BoSS / WVM
-----, CM, CCIL

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

-----,

Claimant,

v.

Action Number: 11-BOR-633

**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 April 26, 2011 on a timely appeal filed January 7, 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

-----, Case Manager (CM), CCIL

Kay Ikerd, RN, Bureau for Senior Services (BoSS)

Melissa Bell, RN, West Virginia Medical Institute (WVMI)

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

It should be note that all parties participated via a telephone conference call.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided 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) for Aged/Disabled Waiver Services dated 12/6/10
- D-3 Notice of Potential Denial dated 12/13/10
- D-4 Notice of Termination/Denial 1/3/11

VII. FINDINGS OF FACT:

- 1) On December 13, 2010 the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program [See Exhibit D-2, Pre-Admission Screening (PAS) completed on 12/13/10].
- 2) On or about December 13, 2010, 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 501.3.2.

Based on your PAS you have deficiencies in only 0 areas.

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. It should be noted that no additional information was received/reviewed.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated January 3, 2011 (Exhibit D-4). This notice states, 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 a 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 0 areas.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous findings, the Department indicated that the medical assessment completed in December 2010 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program. While the Claimant was provided an opportunity to submit additional medical documentation during the two-week period following the Potential Denial Notice (D-3), there was no evidence to indicate supplemental medical documentation was submitted for review.
- 5) Melissa Bell, RN, WVMI, testified that the Claimant reported during the medical assessment she was wheelchair bound last year due to symptoms related to a diagnosis of Transverse Myelitis. The Claimant reported that her symptoms and physical abilities have improved over the last year and that she agreed with the functional assessment when RN Bell reviewed it with her.
- 6) The Claimant contends that she remains medically eligible to participate in the ADW Program as she is demonstrating a functional deficit in Eating, Bathing, Dressing, Grooming and Wheeling.

The following addresses findings specific to each of the contested areas:

Eating – Information presented at the hearing reveals that a deficit is established in eating if the individual requires hands-on (level-2) physical assistance. This includes the act of eating - getting food to the mouth for nourishment and cutting food. Testimony presented in support of a deficit in this area reveals that the Claimant is unable to prepare her food. Notes found on page 7 of D-2 indicate the Claimant reported that she usually goes out to eat but she is able to cut up her own food and feed herself. Pursuant to policy found in the Medicaid Provider Manual, meal preparation is not considered when assessing an individual's functional ability for ADW Program services. Based on the evidence, a deficit cannot be established in eating.

Bathing – The Claimant reported during the assessment that her homemaker is present when she showers due to safety concerns from seizures. However, the Claimant further reported that she does not need assistance getting in or out of the shower; she is able to wash her entire body, and denied that her homemaker provides any assistance with bathing. The Claimant provided contradictory testimony at the hearing and indicated she has difficulty washing her back and lower extremities. The evidence provided in the assessment, including RN Bell’s noted “mini assessment” on page 7, in conjunction with supporting testimony, reveals the Claimant was does not qualify for a functional deficit in bathing.

Dressing – Evidence submitted at the hearing reveals that the Claimant advised RN Bell during the assessment that she dresses herself. In an attempt to be thorough, RN Bell received confirmation that this includes bras, socks, shoes and all clothing. Moreover, RN Bell testified that she appeared for the assessment at 9:00 a.m. - no one had been to the Claimant’s home and she was completely dressed. Upon consideration of the evidence, a functional deficit cannot be awarded in the area of dressing.

Grooming – Policy dictates that an individual must require hands-on physical assistance from at least one person in order to qualify for a deficit in grooming. The Claimant provided testimony to indicate she requires assistance with drying her hair. The Claimant reported during the assessment that she washes her hair while in the shower and that she is able to complete tasks related to mouth care. She reported that she is able to put on deodorant and lotion, and she can trim her fingernails and toenails. The evidence reveals that the Claimant neither reported difficulties with grooming nor demonstrated physical limitations that would corroborate a functional deficit in grooming. As a result, a functional deficit was not established in grooming.

Wheeling – The Claimant testified at the hearing that she required assistance with operating her wheelchair in her home at the time of the assessment. RN Bell, however, provided testimony consistent with the information documented in Exhibit D-2, page 8, and stated that the Claimant reported on the day of the assessment that she was able to wheel herself. Because there is no supporting clinical documentation to corroborate the Claimant was demonstrating physical limitations at the time of the assessment, a deficit cannot be established in wheeling.

7) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 NF Level of Care.

8) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – 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 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.

9) 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) 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.
- 2) The evidence reveals that the Claimant was awarded zero (0) deficits on a PAS completed by WVMi in December 2010.

- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any deficits in December 2010.
- 4) Whereas the Claimant is no longer demonstrating five (5) functional deficits, the Department was correct in its determination that continued medical eligibility for participation in the Aged/Disabled Waiver Program could not be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2011.

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