



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

April 22, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 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 deny your application for 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
Linda Anderson, RN, [REDACTED] County, [REDACTED] WV

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

-----,

Claimant,

v.

Action Number: 11-BOR-634

**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 via telephone conference call on April 19, 2011, on a timely appeal filed January 24, 2010.

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's spouse and representative

Brian Holstine, WV Bureau of Senior Services, Department's representative
Lee Ann Beihl, 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 deny Claimant's application to the Aged and Disabled Home and Community-Based Waiver Program.

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 November 15, 2010, and attached application potential denial letter from the West Virginia Medical Institute (WVMI) dated November 23, 2010.

Claimant's Exhibits:

- C-1 Letter from Claimant's physician, ---- -----, M.D., dated March 3, 2011
- C-2 Letter from Claimant's physician, ---- -----, M.D., dated March 25, 2011

VII. FINDINGS OF FACT:

- 1) Claimant's applied for the Title XIX Aged and Disabled Waiver Program and her application was denied on November 23, 2010. (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 a pre-admission screening or PAS (Exhibit D-2) on November 15, 2010 in the Claimant's home. She stated that Claimant and Claimant's nurse from [REDACTED] Services of [REDACTED] County were present. She added that she subsequently determined Claimant received four (4) deficits on the PAS assessment and therefore did not meet the medical eligibility criteria for the Program.
- 4) The Department sent the Claimant's case management agency, [REDACTED] Services, a Notice of Potential Denial (Exhibit D-2) on November 23, 2010. The form explained that if Claimant or his representatives believed there was additional information regarding his medical condition that was not considered, they should submit it within the next two weeks to WVMI. Department's witness testified that no additional information was received in that period of time.
- 5) The Department sent the Claimant a Notice of Denial dated January 12, 2011. The notice was addressed to Claimant and mailed to -----, -----.
- 6) Claimant's representative, her spouse, stated during the hearing that he was not present for the PAS. He testified that he felt Claimant should have received deficits in the areas of eating and orientation.
- 7) **Eating** is addressed within the area of the PAS listed as Item #26, Functional Abilities which includes instructions to "indicate the individual's functional ability in the home for each item listed therein." The WVMI nurse rated the Claimant at a Level 1, "Self/Prompting," meaning she is capable of performing this activity by herself, but someone may need to prompt her to do so. On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Claimant] states she is able to feed herself and cut her food with a knife."
- 8) **Orientation** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 2, "Intermittently Disoriented," meaning she is aware of time, place and person, but may have disorientation episodes. On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Alert and oriented]"

x 3 during my visit; states she becomes disoriented/confused when her illness/pancreatitis worsens.”

- 9) Claimant’s representative submitted into evidence two letters concerning Claimant’s medical situation. The first letter is from Claimant’s current physician, ---- -----, M.D., dated March 3, 2011. (Exhibit C-1.) It reads in pertinent part:

[Claimant] frequently requires help getting in and out of shower, washing her hair and preparing meals. She has had several syncopal [fainting] episodes and needs to be closely monitored . . . She was first seen in the clinic here on September 23, 2010. I first saw her in October 2011. These issues have been ongoing prior to that.

The second letter is from Claimant’s previous physician, ---- -----, M.D., dated March 25, 2011. (Exhibit C-2.) It reads as follows:

I am writing on behalf of [Claimant]. Due to multiple medical problems, [Claimant] requires assistance with her activities of daily living (ADLs). This assistance includes getting in and out of bed, bathing, being driven to appointments, preparing food including the cutting of more difficult materials such as meat, and opening bottles or jars. In addition to the problems which require assistance with her ADLs, she also experiences frequent syncopal episodes that require she be continuously supervised.

- 10) Claimant’s representative stated during the hearing that Claimant did not like to admit to the things she could not do. He stated that she could not prepare her food, and she could not cut up foods that had a tougher texture such as meats. He stated that her syncopal episodes came onto her without warning, so even though she usually was oriented to person, time and place, there was no way to predict when she would have an episode and then would not be oriented.
- 11) Department’s witness testified that she reviewed the PAS with Claimant and the case management agency nurse, and gave them opportunities to interject comments and ask questions. She stated that neither Claimant nor her nurse presented any information about Claimant being unable to cut meat. The witness testified that food preparation is not a factor in determining whether a deficit should be awarded for eating. She stated that in order to receive a deficit for orientation, Claimant would have to be in a constant state of disorientation. Department’s representative testified that the letter from Claimant’s previous physician (Exhibit C-2) was dated March 25, 2011, so the Department did not have that documentation at the time of the PAS or in the period of time after the potential denial was issued.

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 November 15, 2010, Claimant was assessed with four (4) deficits.
- 2) The Department properly notified the Claimant by sending a Potential Denial Notice to her Case Management Agency on November 23, 2010. No additional information was

provided during the two-week timeframe awarded Claimant in the Potential Denial Notice.

- 3) The Department was correct in its decision to not award a deficit for eating. Neither Claimant nor her case management agency nurse discussed this with Department's witness, the WVMi nurse who conducted the PAS. The Department was correct in its decision to not award a deficit for orientation. Claimant's disorientation was intermittent, according to her evidence and her representative's testimony.
- 4) Claimant's representative was not able to offer substantive evidence that would result in Claimant receiving an additional deficit.
- 5) The required five (5) deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny Claimant's application to 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 22nd Day of April, 2011.

**Stephen M. Baisden
State Hearing Officer**