



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26555

Earl Ray Tomblin  
Governor

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

April 13, 2011

-----  
-----  
-----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the 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 that 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 fails to demonstrate that you require a sufficient number of services, and the degree of care, to medically qualify for benefits and services provided through the Medicaid Aged/Disabled Home and Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
[REDACTED]

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

-----,

**Claimant,**

v.

**Action Number: 11-BOR-639**

**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 13, 2011 on a timely appeal filed January 21, 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

-----, Program Coordinator, [REDACTED] (Claimant's representative)

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department's representative (Participated telephonically)

Debra Lemasters, RN, West Virginia Medical Institute (WVMI), Department's witness (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 action to deny the Claimant's application for benefits and services 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) assessment completed on November 16, 2010
- D-3 Notice of Potential Denial dated November 19, 2010
- D-4 Notice of Termination/Denial dated December 10, 2010

**Claimant's Exhibits:**

- C-1 Correspondence from [REDACTED] MD, dated January 28, 2011 (Provided to BoSS on 3/25/11)

**VII. FINDINGS OF FACT:**

1) On November 16, 2010, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program [Exhibit D-2, Pre-Admission Screening (PAS) form].

2) On or about November 19, 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 2 areas – Grooming and Continence.

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.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated December 10, 2010 (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 2 areas – Grooming and Continence

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 stipulated that the Claimant demonstrates two (2) deficits (Grooming and Bladder Incontinence) but indicated the medical assessment completed in November 2010 fails to identify five (5) functional deficits as required by ADW Program medical eligibility criteria. In addition, the Department's objection to the introduction of Exhibit C-1 is noted as this information was neither submitted timely (within two weeks as required in Exhibit D-3) nor available to Debra Lemasters, RN, WVMI, when the medical assessment was completed. For this reason, Exhibit C-1 is given very little weight in this decision.
- 5) The Claimant contends that he should have been found medically eligible as she is also demonstrating a functional deficit in **orientation, bathing, medication administration** and **vacating** in the event of an emergency.

**Orientation** – In order to qualify for a deficit in orientation, the individual must be identified at a level 3 (totally disoriented, comatose). According to testimony provided by RN Lemasters, the individual must be disoriented at all times. Testimony provided by the Claimant and her representative indicate the Claimant experiences episodes of intermittent disorientation or confusion – She may awaken and be disoriented to time and place, and she sometimes gets disoriented to place when out on her own. While these episodes of disorientation are a legitimate concern, they do not rise to the level of severity required for a nursing facility level of care. A deficit cannot be awarded in orientation.

**Bathing** - The Claimant's representative indicated that the primary concern with bathing is in the Claimant's ability to transfer in-and-out of the bathtub. The Claimant's representative agreed with RN Lemasters assessment (prompting and supervision) indicating the Claimant requires someone to be available for safety reasons, however, the Claimant will not bathe for extended periods due to a fear of falling if no one is available. Pursuant to Medicaid policy criteria, a deficit can only be awarded in bathing if the individual requires hands-on physical assistance – this could include physical assistance with transferring. Because there was no evidence presented to indicate that Claimant requires hands-on physical assistance, a functional deficit was not identified in bathing.

**Medication Administration** – RN Lemasters testified that a deficit is identified in medication administration when the individual needs someone to place the medications in their mouth, eye, tube etc... The Claimant is on multiple medications and according to testimony presented by, and on behalf of the Claimant, she often forgets to take her medications. While this clearly presents a health and safety risk, the Claimant was appropriately assessed as requiring prompting and supervision - and this level of assistance does not qualify as a functional deficit.

**Vacating in the event of an emergency** – The Claimant's representative noted that episodes of intermittent disorientation is a concern for the Claimant's ability to vacate her home. ----- testified that she witnessed an episode recently wherein the Claimant was unable to unlock the door at her residence from the inside. A review of Exhibit D-2 reveals that RN Lemasters identified this area as a concern and noted that while the Claimant can ambulate independently, her diagnoses of PTSD, Anxiety and hallucinations would constitute the need for supervision. Because the Claimant does not require physical assistance to vacate her home in the event of an emergency, a functional deficit cannot be awarded.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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.

7) 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.

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 B  
(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. This is the same level of care that is required to qualify medically for nursing home services.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS completed by WVMI in November 2010 – Grooming and Continence.
- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any additional deficits when the assessment was completed.
- 4) Whereas the Claimant demonstrated only two (2) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

**X. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's application for benefits and services through the Medicaid, Aged/Disabled, Title XIX (HCB) 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 April, 2011.**

---

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