



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

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

April 28, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 21, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Medicaid 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed that you do meet the medical eligibility requirements for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to Reverse the proposal of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Kay Ikerd, RN, Bureau for Senior Services  
[REDACTED]

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

-----,

**Claimant,**

v.

**Action Number: 11-BOR-754**

**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 21, 2011 on a timely appeal, filed January 26, 2011.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

**II. PROGRAM PURPOSE:**

The Aged and Disabled Waiver program, hereinafter ADW, 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

-----, Homemaker Aide

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

Lee Ann Beihl, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department is correct in its proposal to terminate the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver Program.

**V. APPLICABLE POLICY:**

Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

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

**Department's Exhibits:**

- D-1 Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening assessment dated December 14, 2010
- D-3 Notice of Potential Denial dated December 20, 2010
- D-4 Information from [REDACTED] M.D dated January 24, 2011
- D-5 Notice of Denial dated January 18, 2011

**VII. FINDINGS OF FACT:**

- 1) On December 14, 2010, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Lee Ann Beihl, WVMI assessing nurse testified that the assessment was completed with Claimant and her Homemaker Aide. During the assessment, Ms. Beihl identified the Claimant's functional deficits as bathing, grooming, dressing, and continence.
- 3) On December 20, 2010, the Claimant was issued Exhibit D-3, Notice of Potential Denial. This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

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 4 areas, bathing, grooming, dressing, and continence.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMJ within a two week timeframe from the date of the issuance of the notice.

- 4) On January 18, 2011, the Claimant was issued Exhibit D-5, Notice of Denial, informing her that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents 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 the 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 4 areas-bathing, grooming, dressing, and continence.

- 5) -----, the Claimant's representative contends that additional deficits should be awarded in the areas of vacating during an emergency, transferring, walking, medication administration and eating.

The following addresses the contested areas:

**Vacating during an emergency**-----purported that she believes that the Claimant could vacate a building if she had someone to lead her, but indicated that the Claimant has poor balance and a history of falls. Ms. Beihl testified that the Claimant related during the assessment that she could vacate her residence on her own and documented in the PAS assessment that she would require supervision due to her poor balance.

Policy requires that a deficit is awarded in the contested area when the individual is physically or mentally unable to vacate their residence. Policy does not allow for a deficit to be awarded when the individual can vacate independently or with supervision. Testimony indicated that the Claimant could vacate if she had someone to lead her and did not demonstrate that the Claimant was physically unable to vacate in the event of an emergency; therefore, a deficit in the contested area **cannot** be awarded.

**Medication Administration**-----stated that the Claimant makes poor decisions and requires prompting and reminding to take her medications. Ms. Beihl documented in the PAS assessment that all of the Claimant's medications were prompted and supervised by her caregiver and the Claimant was able to put them in her mouth.

Policy allows for a deficit to be awarded in the contested area when the individual is incapable of administering their own medication. Testimony revealed that the Claimant is able to place her medications in her own mouth and only requires prompting and supervision in the contested area; therefore, the Claimant was correctly assessed and an additional deficit **cannot** be awarded.

**Transferring**-----stated that the Claimant has back trouble, difficulty getting around, and experiences poor balance and falls. -----noted that the Claimant experienced a fall prior to the assessment, which resulted in the bruising of her legs. -----testified that the Claimant requires assistance with transferring on the toilet in order to prevent falling. Ms. Beihl documented that she witnessed the Claimant transfer with the aid of her furniture and cane assistance and noted her poor balance, in which she leaned to the right.

In review of the PAS assessment, the assessing nurse documented that the Claimant requires assistance in and out of shower chair and poor balance. This documentation is consistent with testimony that the Claimant requires assistance when transferring to the toilet or a seated position. It is reasonable to assume that Claimant requires assistance in transferring due to her poor balance and her history of falls; therefore, an additional deficit in the contested area **can be** awarded in the area of transferring.

**Walking**-----testified that the Claimant has a history of falls, in which she fell prior to the assessment, around the first week of December, resulting in the bruising her legs. Ms. Beihl noted that the Claimant demonstrated her ability to walk with can assistance and noted her poor balance and unsteady gait. Ms. Beihl documented that the Claimant had a history of falls with and without injury.

Testimony indicated that the Claimant can ambulate with poor balance and the assistance of a cane, but failed to demonstrate the Claimant's need for physical assistance in the contested area; therefore, an additional deficit **cannot** be awarded in the functional area of walking.

**Orientation**-----stated that Claimant has problems with her long and short term memory. Ms. Beihl testified that the Claimant was alert and oriented at the time of the assessment and that she reported intermittent disorientation throughout the day and night. Policy stipulates that a deficit is awarded in orientation when the individual is totally disoriented or comatose (Level 3 or higher). The Claimant was alert and oriented at the time of the assessment and was assessed as a Level 2 Intermittent Disoriented. Based on the information related at the assessment the Claimant was alert and oriented, with no indication of total disorientation, only memory loss; therefore, the assessment of intermittent disorientation is correct and an additional deficit in the contested area **cannot** be awarded.

**Eating**-----testified that the Claimant requires prompting in order to eat. Ms. Beihl stated that at the assessment, the Claimant reported that she was able to feed herself and was able to cut her food with a knife and was assessed as a Level 1 Self/Prompting.

Policy requires that a deficit is awarded when the individual requires physical assistance to obtain nourishment and preparation, prompting is not considered when awarding a deficit in the area. The Claimant indicated that she could cut her own food and feed herself; therefore, the Claimant was correctly assessed as self/prompting and an additional deficit **cannot** be awarded.

6) 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.

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 ADW 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:

(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) Policy dictates that in order to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five (5) health areas on the Pre-Admission Screening assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of bathing, grooming, dressing, and continence.
- 3) Evidence presented during the hearing established additional functional deficits in the area of transferring. The Claimant's total number of deficits awarded is five; therefore, the Department was incorrect in its decision to terminate the Claimant's Aged and Disabled Waiver benefits.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to terminate the Claimant's medical eligibility for benefits and services under 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 \_\_\_\_\_ day of April, 2011.**

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**Eric L. Phillips  
State Hearing Officer**