



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

June 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 5, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal 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 should have received an additional deficit on your March 22, 2012 Pre-Admission Screening (PAS) assessment. Therefore, you 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 participation in 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
-----, RN, Allied Nursing and Community Services

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

IN RE: -----,

Claimant,

v.

ACTION NO: 12-BOR-1115

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This Fair Hearing was conducted by telephone conference call on June 5, 2012, on a timely appeal filed March 29, 2012.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (ADW) Program is defined as a long-term care alternative that provides services enabling 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
-----, Claimant's Sister and Representative
-----, Claimant's Brother-in-Law and Witness
-----, RN, Allied Nursing and Community Services, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Angie Hill, 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 who gave testimony under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening (PAS) conducted on March 22, 2012.

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 501.5.
- D-2 Pre-Admission Screening (PAS) assessment conducted on March 22, 2012.
- D-3 Potential denial letter from APS Healthcare, dated March 23, 2012.
- D-4 Denial letter from APS Healthcare, dated April 11, 2012.
- D-5 Pre-Admission Screening (PAS) assessment conducted on March 28, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of his continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in his home on March 22, 2012. (Exhibit D-2.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5.1 (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 her/her own medications.

- 3) Department's Witness, the WVMi nurse who conducted the March 22 PAS, testified that the Claimant, Claimant's sister, another nurse from WVMi, Claimant's case manager from Allied Nursing and Community Services and she were present for the assessment session. She added that she assessed Claimant with four (4) deficits on the PAS, for vacating a building during an emergency, bathing, dressing and grooming, and therefore Claimant did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department issued a Notice of Potential Denial dated March 23, 2012. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMi within the next 2 weeks." The PAS indicates that the Department received additional medical information from Claimant's physician indicating Claimant had a diagnosis of pain. This did not result in an additional deficit. The Department sent a Notice of Termination/Denial to Claimant on April 11, 2012. (Exhibit D-4.)

- 5) Claimant's Representative asserted that Claimant should have received five (5) additional deficits on item #26 of the PAS, for the functional abilities of eating, continence, transferring and walking, and in the area of administering medications.
- 6) **Eating:** The WVMi nurse rated Claimant at Level 1, "Self/Prompting," for this functional ability and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] reports he can feed himself and cut up his foods/meats without assist. RN questioned [Claimant] regarding cutting up tough meat and hard fruits and [Claimant] states if meat is tough he does not eat it and states he eats apples whole." Department's Witness testified that she checked Claimant's hand grips and found he had good strength in his left hand and fair strength in his right. She testified that he told her he can feed himself but if he is served tough meat, he does not eat it. She stated that on the PAS for the previous year, conducted on March 28, 2011, Claimant had reported to her that "he feeds himself but needs assistance in cutting up meats," and he was assessed with a deficit. (Exhibit D-5.) On section #23 of the current PAS (Exhibit D-2), Medical Conditions/Symptoms, the assessing nurse has documented that Claimant is diagnosed with significant arthritis.
- 7) **Incontinence:** The WVMi nurse rated Claimant at Level 2, "Occasionally Incontinent," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] reports he has occasional accident . . . but denies using incontinence supplies at this time." Claimant's Representative stated that Claimant had been having incontinence accidents at the time of the PAS but he was embarrassed to say anything about it.
- 8) **Transferring:** The WVMi nurse rated Claimant at Level 2, "Supervised/Assistive Device," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] demonstrates how he transfers from the chair and he used the arms of the chair to assist and stood slowly and held onto the siderail of the bed to steady himself. [Claimant] states he can get in and out of the bed and on and off the commode himself." Claimant's Witness, his brother-in-law, testified that Claimant needs help getting into and out of the bed. He stated that when Claimant gets into the bed, he and his wife have to watch him to make sure he does not keep rolling and go out of the bed on the other side. Department's Witness testified that she saw Claimant transfer out of his chair with the assistive devices of nearby objects. She added that she received no reports of his needing one-person assistance to transfer.
- 9) **Walking:** The WVMi nurse rated Claimant at Level 2, "Supervised/Assistive Device," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] states he walks with physical therapy with a walker and they walk behind him following with a wheelchair. He states he can only walk short distances and then has to sit down and rest due to his legs getting weak." The brother-in-law stated that Claimant walks but falls about five times per week. He stated that he and his wife took Claimant into their home on April 18, 2012, and observed his frequency of falling at this time. Department's Representative argued that the PAS was completed on March 22, 2012, and that additional information

pertinent to any PAS must be submitted no longer than two weeks after it has been completed.

- 10) ***Administering Medications:*** The WVMi nurse rated Claimant as “With Prompting/Supervision,” for this area of the PAS and wrote in the “Nurse’s overall comments” section, “Sister states at home she fills his meds in a pill box and he states he can take the medication himself.” The brother-in-law testified he and his wife had to remind Claimant to take his medications even after they have been arranged in a medication planning box. Department’s Representative stated that even if he has to be reminded to take his medications after they have been put into a medication box, that is not considered a deficit as long as he can physically place the medications into his mouth.

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 his PAS that was performed on March 22, 2012, Claimant was assessed with four (4) deficits.
- 2) The Department was incorrect in its decision not to assess a deficit in the area of eating. The WVMi nurse testified and recorded on the PAS that Claimant did not eat firm meats that needed to be cut with a knife. Also, the WVMi nurse documented in the Medical Conditions/ Symptoms section of the PAS that Claimant had significant arthritis, which could compromise his ability to cut up his meats and other firm foods.
- 3) The Department was correct in its decision not to assess a deficit in the area of incontinence. The WVMi nurse recorded on the PAS that Claimant reported only occasional bladder and bowel incontinence. She testified that Claimant did not report the use of incontinence supplies.
- 4) The Department was correct in its decision not to assess a deficit in the area of transferring. The WVMi nurse testified and recorded on the PAS that she witnessed Claimant transferring with assistive devices.
- 5) The Department was correct in its decision not to assess a deficit in the area of walking. The WVMi nurse testified and recorded on the PAS that Claimant reported walking with the assistance of a walker as part of his physical therapy. The reports from Claimant’s caretakers of his frequent falls came too long after the PAS was conducted to be considered part of the March 2012 PAS.
- 6) The Department was correct in its decision not to assess a deficit in the area of administering medications. The WVMi nurse testified and recorded on the PAS that Claimant’s sister prepared his medications by putting them in a medication planning box, and there was no indication that he could not physically take them.

- 7) Claimant's representative and witnesses provided evidence to support a finding that an additional deficit should have been awarded for the functional ability of eating on the March 2012 PAS. Therefore, when combined with the already assessed four (4) deficits, the required five (5) deficits have been established to meet medical eligibility criteria for the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate Claimant's participation in 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 27th Day of June, 2012.

Stephen M. Baisden
State Hearing Officer