



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

Rocco S. Fucillo
Cabinet Secretary

July 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on July 5, 2012. 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 fails to demonstrate that you continue to need the degree of care required to medically qualify you for the Medicaid 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/WVMI
Allied Nursing & Community Services

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

-----,

Claimant,

v.

Action Number: 12-BOR-1250

**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 convened telephonically on July 5, 2012, on a timely appeal filed April 30, 2012.

It should be noted that benefits and services provided through the Medicaid Aged and Disabled Waiver Program have continued pending a hearing decision.

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

-----, CM, Allied Nursing, Claimant's witness

Sarah Birkhead, RN, BoSS, Department representative

Melissa Bell, RN, WVMI, Department witness

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 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 Waiver Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 4/2/12
- D-3 Notice of Potential Denial dated 4/4/12
- D-4 Notice of Decision dated 4/24/12
- D-5 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 4/27/11

VII. FINDINGS OF FACT:

- 1) On April 2, 2012, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Medicaid Aged and Disabled Waiver Services Program, hereinafter ADW Program. (See Exhibit D-2, Pre-Admission Screening (PAS), completed on 4/2/12).
- 2) On or about April 4, 2012, 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 1 areas [sic] –Vacating a Building.

This notice goes on to advise the Claimant that additional medical information would be considered if received within two weeks.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated April 24, 2012 (Exhibit D-4). This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) recently conducted an assessment of your medical eligibility for the Aged and Disabled Waiver Program. You have been determined medically ineligible for Waiver services.

This decision results in the denial or termination of your Waiver services. This is based on policy in the Medicaid program regulations, Aged and Disabled Waiver Policy Manual, Section 501.5.1.1 and the Pre-Admission Screening (PAS) Form (attached).

Reason for Decision: Medical eligibility for the Aged and Disabled Waiver Program requires deficits in at least five (5) of the health areas listed below. This section indicates that deficits were identified in the following areas: Vacate a Building.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in one (1) areas [sic]. Because you have less than five (5) deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) The Department's representative cited Medicaid policy and called its witness, Melissa Bell, RN, West Virginia Medical Institute (WVMI), to testify about the functional findings on the PAS. As noted in the previous finding, the Department stipulated that the Claimant demonstrates one (1) deficit – Vacating a Building [in the event of an emergency]. The Department, however, maintained that the medical assessment completed in April 2012 by RN Bell fails to identify five (5) functional deficits.
- 5) The Claimant contended that she remains medically eligible to participate in the ADW Program, as she should have been awarded deficits in eating, bathing, dressing, walking and medication administration. The following will address each of the contested areas:

Eating – The Claimant purported that she is unable to prepare her meals, however, pursuant to Medicaid policy, a deficit in eating can only be established if the individual requires physical assistance with obtaining nourishment - meal preparation is not considered. While a functional deficit in eating was established in the previous PAS (D-5), the Claimant reported that she could cut up her food and feed herself during the April 2012 PAS assessment. Moreover, documentation found in Exhibit D-2 reveals that the Claimant demonstrated good grip strength bilaterally. As a result, the Claimant does not qualify for a functional deficit in eating.

Bathing – Exhibit D-2 reveals the Claimant was assessed as a Level 1 (self/prompting) in the functional area of bathing, as she indicated she is able to get in and out of the tub by herself and is able to wash all of her body without the assistance of her homemaker. In the previous, PAS the Claimant reported that she required assistance transferring in and out of the tub and that she required assistance with washing her feet and back. While the Claimant initially indicated bathing was problematic, she did not provide any testimony specific to assistance required in

bathing. In the absence of evidence to the contrary, a deficit was not identified in the functional area of bathing.

Dressing – In order to qualify for a functional deficit in dressing, the individual must demonstrate that they require physical assistance (Level 2). The Claimant was assessed at a Level 1 (self/prompting) in the PAS assessment completed in April 2012 (D-2) as she reported she can put on her shirt, pants, socks and shoes by herself, and that she can manage buttons, zippers and snap her bra without assistance. Documentation found in the previous PAS (D-5) is consistent with the current PAS, however, the reason the Claimant was awarded a deficit in the 2011 PAS for dressing was not clearly indicated. While the Claimant initially indicated she wanted to contest the functional area of dressing, she failed to provide any testimony in support of her contention. Evidence fails to demonstrate a functional deficit in the area of dressing.

Walking – The Claimant purported that “she cannot walk good” during the hearing, and documentation found in the current PAS (D-2) indicates she uses a cane, as needed, and relies on walls and furniture for assistance. RN Bell further testified that she observed the Claimant walk and noted that her gait was steady. Because there is no evidence (testimony or documentation) to indicate the Claimant requires hands-on physical assistance to walk (Level 3), the Claimant was correctly assessed at a Level 2 (supervised/assistive device). As a result, a functional deficit was not identified in walking.

Medication Administration – The Claimant was assessed as requiring prompting and supervision in medication administration, and pursuant to policy, a deficit can only be established if she is unable to administer her medications (placing pill in mouth, administering injections, pain patches, etc...). The Claimant testified that she needs assistance with her pill box because she sometimes forgets whether or not she has taken her medication. Clinical documentation found in Exhibit D-2, page 3, reveals the Claimant reported she is able to open pill bottles and place her medications in her mouth, and that she is able to administer insulin using a pen and self-administer her inhaler. Evidence indicates that the Claimant requires prompting and supervision with medication administration, as indicated in the current and previous PAS assessments; however, this level of assistance does not qualify as a functional deficit.

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 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:
 - (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) functional deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) Evidence reveals that the Claimant was awarded one (1) functional deficit on a PAS completed by WVMi in April 2012 – Vacating a building.

- 3) Evidence presented at the hearing fails to confirm the Claimant should have been awarded any additional functional deficits.
- 4) Whereas the Claimant was demonstrating only one (1) program qualifying functional deficit at the time of the assessment, evidence confirms that the Claimant is no longer medically eligible to participate in the Medicaid Aged/Disabled Waiver Program.

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 July, 2012.

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