



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

August 8, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on August 7, 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 for the 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
CCIL, -----, WV

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

-----,

Claimant,

v.

Action Number: 12-BOR-1258

**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 originally scheduled to convene on June 26, 2012, but was continued at the request of the Department and convened on August 7, 2012, on a timely appeal filed April 27, 2012. 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

-----, RN, ----- County Senior Citizens, Claimant's witness

-----, Claimant's homemaker/witness

Kay Ikerd, RN, BoSS – Department's representative (participated telephonically)

Debbie Sickles, RN, WVM I – 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 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 4/3/12
- D-3 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 5/19/11
- D-4 Notice of Potential Denial dated 4/4/12
- D-5 Notice of Decision dated 4/20/12

VII. FINDINGS OF FACT:

- 1) On April 3, 2012, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program. (See Exhibit D-2, Pre-Admission Screening (PAS), completed on 4/3/12).
- 2) On or about April 4, 2012, the Claimant was notified of Potential Denial (Exhibit D-4). 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 4 areas – Vacate a Building, Bathing, Grooming and Continence.

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 20, 2012 (Exhibit D-5). 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, Bathing, Grooming and Continence.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in four (4) areas. Because you have less than five (5) deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) As noted in the previous finding, the Department stipulated that the Claimant demonstrates four (4) deficits (vacating, bathing, grooming and bladder incontinence). The Department, however, maintained that the medical assessment completed in April 2012 by Debbie Sickles, RN, West Virginia Medical Institute (WVMI), fails to identify five (5) functional deficits.
- 5) The Claimant and her witnesses contended that she remains medically eligible to participate in the ADW Program, as she should have been awarded deficits in dressing, orientation, walking and transferring. The following will address each of the contested areas:

Dressing – Pursuant to Medicaid ADW regulations, individuals can only qualify for a functional deficit in dressing if they require hands-on physical assistance – Level-2 or higher. The Claimant testified that she requires physical assistance with dressing because she is unable to bend over and put on her adult incontinence briefs or her pants. The Claimant purported that she is on continuous oxygen and suffers from vertigo (dizzy spells) – both of which are verified in Exhibit D-2. The Claimant further reported that she has fallen in the past and requires help with dressing. The Department acknowledged that the Claimant was awarded a functional deficit in the area of dressing in the previous PAS (Exhibit D-3); however, this document indicates that the Claimant's inability to dress was related to her arthritis (inability to manipulate buttons, snaps and zippers). RN Sickles testified, and the Claimant confirmed, that the Claimant reported she was independent with dressing during the assessment, and denied requiring any assistance with her shirts, pants, socks, shoes, bras or buttons, zippers and snaps. RN Sickles further purported that all parties present at the assessment, -----, Claimant's case manager, and -----, Claimant's homemaker/caregiver, agreed that the Claimant did not require physical assistance with dressing. RN Sickles cited information in Exhibit D-2, page 9, wherein she documented that she asked the homemaker/caregiver again on the way out of the door if she was certain that the member did not need assistance to cut up tough foods or assistance with dressing. RN Sickles documented the worker stated – "No, I never have assisted her, and

actually, I don't do much of anything for her." The evidence clearly supports the Department's finding - RN Sickles went above and beyond her responsibilities to confirm the information provided regarding the Claimant's functional ability to dress was reported and documented accurately. Based on the evidence, the Claimant's functional ability to dress was correctly assessed at a Level-1 (Self/Prompting). A functional deficit cannot be awarded in the area of dressing.

Orientation – According to ADW Program policy, individuals are demonstrating a functional deficit in orientation when they are totally disoriented or comatose (Level-3). Evidence submitted at the hearing (Exhibit D-2, page 7) reveals that the Claimant was able to identify the homemaker present during the assessment by name and relationship, and she able to recite her date of birth as well as her social security number. The Claimant accurately reported her address (city, state and zip code), and while she knew the current month and year, she was confused about the day of the week. While there was testimony proffered on behalf of the Claimant to indicate she is "disoriented sometimes," this information confirms the findings of RN Sickles – intermittent disorientation. Because the Claimant is not totally disoriented, a deficit cannot be established.

Walking/Transferring – -----, RN, ----- County Senior Citizens, relayed concerns regarding the Claimant's ability to ambulate and transfer outside of her home. Additionally, RN ----- contended that a deficit in "vacating" supports the establishment of a deficit in walking and transferring. While a deficit in walking and transferring would clearly support the establishment of a deficit in vacating, the fact that the Claimant ambulates and/or transfers slowly does not indicate she require hands-on physical assistance. -----, Claimant's homemaker/caregiver, purported that she must sometimes hold on to the Claimant's cane when they are at the grocery store. However, Exhibit D-2, page 3 (#26), and the Medicaid regulations, clearly indicate that the assessment must only include the individual's functional ability in the home. Testimony and documentation submitted at the hearing reveals that the Claimant uses her cane and/or furniture in the home to assist with walking and transferring. Based the evidence, the Claimant was correctly assessed at a Level-2 (supervised/assistive device). Because the Claimant does not require hands-on physical assistance (Level-3 or higher) in the functional areas of walking and transferring, a deficit cannot be awarded in either of the contested areas.

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) The evidence reveals that the Claimant was awarded four (4) functional deficits on a PAS completed by WVMi in April 2012 – vacating a building [in the event of an emergency], bathing, grooming and continence.

- 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 four (4) program qualifying functional deficits 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 August 2012.

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