



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

August 6, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 2, 2012. Your hearing request was based on the Department of Health and Human Resources' termination of Medicaid Aged and Disabled Waiver (ADW) Program services based on medical findings.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.5.1.1).

The information submitted at your hearing revealed that the Department was correct to award two deficits on your PAS assessment and to terminate ADW services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Department Representative
Melissa Bell, West Virginia Medical Institute
Allied Nursing and Community Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1384

**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 concluded on August 6, 2012, 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 convened on August 2, 2012, on a timely appeal, filed May 5, 2012.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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
-----, Claimant's representative
-----, Claimant's witness
-----, Claimant's witness
-----, Claimant's witness
Kay Ikerd, Department representative
Melissa Bell, Department witness

Presiding at the Hearing was Todd Thornton, 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 decision to terminate Aged and Disabled Waiver Program services to the Claimant based on medical findings.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1
- D-2 Pre-Admission Screening (PAS) form dated March 27, 2012
- D-3 PAS form dated March 31, 2011
- D-4 Notice of potential denial dated April 3, 2012
- D-5 Notice of decision dated April 24, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant is a 79-year-old female recipient of Aged and Disabled Waiver (ADW) Services. Melissa Bell, a registered nurse employed by West Virginia Medical Institute (WVMI), completed a Pre-Admission Screening (PAS) assessment (Exhibit D-2) of the Claimant on March 27, 2012, to reevaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-4) on April 3, 2012, and a denial notice (Exhibit D-5) on April 24, 2012. Both notices indicated that only two deficits were awarded and that a minimum of five deficits are required for medical eligibility.
- 2) Kay Ikerd, representative for the Department's Bureau of Senior Services, testified that the applicable policy for this case is from the Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services. At §501.5.1.1, this policy (Exhibit D-1) states as follows:

501.5.1.1 Medical Criteria

An individual must have five deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

| Section | Description of Deficits | |
|---------|--|--|
| #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 | |
| a. | Eating | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b. | Bathing | Level 2 or higher (physical assistance or more) |
| c. | Dressing | Level 2 or higher (physical assistance or more) |
| d. | Grooming | Level 2 or higher (physical assistance or more) |
| e. | Continence, bowel | Level 3 or higher; must be incontinent. |
| f. | Continence, bladder | |
| g. | Orientation | Level 3 or higher (totally disoriented, comatose). |
| h. | Transfer | Level 3 or higher (one-person or two-person assistance in the home) |
| i. | Walking | Level 3 or higher (one-person assistance in the home) |
| j. | 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 for 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. | |

- 3) Ms. Bell testified that based on her March 27, 2012 PAS assessment (Exhibit D-2), she awarded the Claimant deficits in two areas: *grooming* and *vacating the building in the event of an emergency*.
- 4) Three additional areas were proposed by the Claimant or on her behalf: *bathing*, *dressing*, and *eating*.
- 5) -----, the Case Manager and representative for the Claimant, testified that the Claimant was awarded deficits in *bathing*, *dressing*, and *eating* on the PAS from the previous year (Exhibit D-3).

- 6) Ms. Bell's PAS notes (Exhibit D-2) regarding *bathing* are as follows in pertinent part:

BATHING: Member reports she takes a shower at this time, member reports she has a shower stool, member reports she is getting in/out of shower by self at this time, member reports family is in home when she showers. Member reports she washes her body, member report [*sic*] she uses a long handled brush to wash feet and back. Member reports she is showering by self and at this time no person is assisting her with washing herself. Member denies HM assisting her with bathing.

Ms. Bell's notes regarding *dressing* are as follows in pertinent part:

DRESSING: Member reports she is not requiring assistance to get dressed at this time. Member reports she wears house dresses except for going out of home. Member reports she is able to put pants on by self and will sit on bed and put pants on legs and pull pants up by self. Member denies requiring assistance with shirts. Member reports she is able to put on socks by self, member reports she has slip on shoes and is able to put these on by self. Member reports after CVA last year she required assistance to dress, but is not requiring assistance with dressing at this time.

Ms. Bell's notes regarding eating are as follows in pertinent part:

EATING: Member reports daughter will prepare meals, member reports she is able to cut up foods and meats and she is able to feed self.

Ms. Bell noted on the PAS form (Exhibit D-2) that the Claimant and ----- were present for the PAS assessment, stating "Reviewed again bathing and dressing with member and CM, member in agreement with levels marked," and noted that all present for the assessment were in agreement with it at that time.

- 7) ----- testified that the Claimant's condition has changed since the PAS assessment. ---- -- testified that a letter from the Claimant's physician – after the Claimant's condition changed because of a broken hip – noted the Claimant's physical assistance needs. However, neither were considered as they reflected the Claimant's condition after the PAS.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had two qualifying deficits. Testimony from the Claimant proposed three additional deficits in the areas of *bathing*, *dressing*, and *eating*.

- 2) Testimony regarding *bathing* contradicted the information given to the assessing nurse at the time of the PAS. The Claimant explicitly denied requiring physical assistance in this area at the time, and the Case Manager was present during this assessment and offered no dispute of this statement. The Department correctly assessed *bathing*.
- 3) Testimony regarding *dressing* contradicted the information given to the assessing nurse at the time of the PAS. The Claimant explicitly denied requiring physical assistance in this area at the time and noted her improvement from the previous year in this area, and the Case Manager was present during this assessment and offered no dispute of these statements. The Department correctly assessed *dressing*.
- 4) Testimony regarding *eating* contradicted the information given to the assessing nurse at the time of the PAS. The Claimant explicitly stated at the time that she can cut up her own foods and meats and feed herself, and the Case Manager was present during this assessment and offered no dispute of this statement. The Department correctly assessed *eating*.
- 5) With no additional deficits revealed through testimony or evidence, the Department was correct to terminate the Aged/Disabled Waiver Services of the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Aged and Disabled Waiver Services of the Claimant based on failure to meet medical eligibility requirements.

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.

Todd Thornton
State Hearing Officer