



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

Rocco S. Fucillo
Cabinet Secretary

August 15, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 14, 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 do not meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** 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
-----, ----- Care, Charleston, WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 12-BOR-1414

**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 August 14, 2012, on a timely appeal filed May 17, 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
-----, ----- Care, Claimant's Representative
-----, ----- Care, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Brenda Myers, RN, West Virginia Medical Institute (WVMI), 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 April 10, 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 April 10, 2012
- D-3 Potential denial letter from APS Healthcare, dated April 17, 2012
- D-4 Letter from WVMI to -----, MD, asking him to confirm a diagnosis of arthritis, dated April 13, 2012, and the physician's confirmation returned to WVMI on April 23, 2012
- D-5 Notice of Decision dated May 3, 2012

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 April 10, 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) The Department's Witness, the WVMi nurse who conducted the April 10 PAS, testified that the Claimant, Claimant's homemaker from ----- Care 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 April 17, 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 (Exhibit D-4) indicating Claimant had a diagnosis of significant arthritis. This did not result in an additional deficit. The Department sent a Notice of Termination/Denial to Claimant on May 3, 2012. (Exhibit D-5.)

- 5) The Claimant's Representative asserted that Claimant should have received two (2) additional deficits on item #26 of the PAS, for the functional abilities of continence and walking.
- 6) **Continence:** The WVMi nurse rated Claimant at Level 1, "Continent," for this functional ability and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] denies any incontinence with bowels or bladder. I asked him and explained this is a private and somewhat embarrassing question but did he ever have accidents or leakage with urine or bowels and he denies. I explained it is important if he does have any difficulty for him to tell me in order for him to receive proper credit in this area and again he denies. He denies use of incontinent supplies as well." Claimant's Witness stated that Claimant had been experiencing three to four incontinence accidents per week at the time of the PAS but he was too embarrassed to say anything about it to the assessing nurse.
- 7) **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, "When asked, [Claimant] did tell me he can walk short distances and did demonstrate his ability for me. He stood from wheelchair and walked from it across kitchen floor to counter top independently. He did reach out and steady himself with kitchen counter top as he neared it and then he walked back to wheelchair." Claimant testified that he has experienced serious falls in his home while attempting to walk. He stated that recently he was so seriously injured in a fall in his home that he had to go to a hospital emergency room. Claimant's witness also testified that Claimant falls frequently and has injured himself and damaged furniture in his apartment during these incidents.

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 and Disabled Waiver Program. On his PAS that was performed on April 10, 2012, Claimant was assessed with four (4) deficits.
- 2) 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 no bladder or bowel incontinence. She testified that Claimant did not report the use of incontinence supplies.
- 3) 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 demonstrated his ability to walk in his apartment by using the walls, furniture and other surfaces as support.

- 4) Claimant's representative and witnesses did not provide evidence to support a finding that additional deficits should have been assessed on the April 2012 PAS. Therefore, the required five (5) deficits have not 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 **uphold** 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 15th Day of August, 2012.

**Stephen M. Baisden
State Hearing Officer**