



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

November 29, 2012

Attn: ----

Re: ----

Case No.: 12-BOR-1581

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your client's hearing held on November 27, 2012. Your client's hearing request was based on the Department of Health and Human Resources' proposal to terminate her benefits and services provided 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 your client continues 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 client's 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

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

Claimant,

v.

Action Number: 12-BOR-1581

**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 August 16, 2012 (continued at the request of the Respondent), and again on September 6, 2012 (continued at the request of the Claimant), but was convened on November 27, 2012, on a timely appeal filed June 13, 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

----, ---- – Counsel for the Claimant

----, Case Manager, ----Agency – Claimant’s witness

Mary McQuain, Esq., Assistant Attorney General – Counsel for Respondent (participated telephonically)

Kay Ikerd, RN, BoSS – Respondent’s representative (participated telephonically)

Heather Randolph, RN, WVMI – Respondent’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 Respondent was correct in its proposal to terminate 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 Claimant's Request for Hearing received 6/13/12
- D-3 Notice of Decision dated 6/4/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 5/16/12
- D-5 Medical Necessity Evaluation Request dated 2/20/12
- D-6 Eligibility Determination dated 5/11/12
- D-7 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 5/11/11
- D-8 Medical Necessity Evaluation Request dated 2/4/11
- D-9 Claimant's Informed Consent and Release of Medical Information dated 5/16/12
- D-10 Fax correspondence from Dr. ----dated 6/4/12

Claimant's Exhibits:

- C-3 Claimant's medical record from ---- Clinic – appointment date 5/14/12

Claimant's proposed Exhibits C-1, C-2, C-4, C-5 and C-6 were ruled to be untimely and/or irrelevant upon objection by Respondent.

VII. FINDINGS OF FACT:

- 1) On May 16, 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-4, Pre-Admission Screening (PAS), completed on 5/16/12).

- 2) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated June 4, 2012 (Exhibit D-3). 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: Grooming and Continence.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in two (2) areas. Because you have less than five (5) deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 3) Pursuant to the findings noted in Exhibits D-3 and D-4, Respondent, by counsel, Mary McQuain, Esq., Assistant Attorney General, stipulated that the Claimant was demonstrating two (2) deficits (grooming and bladder incontinence). Respondent, however, maintained that the medical assessment completed in May 2012 by Heather Randolph, RN, West Virginia Medical Institute (WVMI), fails to identify five (5) functional deficits.
- 4) The Claimant, by counsel, ----, ----, contended that the Claimant remains medically eligible to participate in the ADW Program, as she should have been awarded deficits in vacating [in the event of an emergency], bathing and dressing.
- 5) RN Randolph explained her employment responsibilities with WVMI and how a medical assessment is conducted. She reported that while there is not a set script, or specific questions required when determining an individual's functional ability, several factors are taken into account, including: Self-reported abilities (good and bad days), the observed functional abilities of the individual, when the individual last required physical assistance in that functional area, and the individual's physical environment. RN Randolph purported that she explained the purpose of her visit and advised the Claimant it was important the information she provided was accurate because it is used to determine medical eligibility for the ADW Program.
- 6) Specific to the day of the assessment, the Claimant testified - "I did not give truthful answers to the woman because I wanted rid of her."

- 7) The following will address each of the functional areas contested by the Claimant:

Vacating – RN Randolph proffered testimony to indicate her assessment determined the Claimant was capable of vacating her home [in the event of an emergency] independently. RN Randolph cited her documentation (Exhibit D-4, page 7 of 10), and noted that the Claimant reported she had no concerns about her ability to vacate her home on her own in an emergency. The Claimant informed RN Randolph that she “can and does walk up and down the wooden steps from the front porch without assistance,” and that she has a rear exit from the home she could use to vacate. The Claimant indicated that it would not be any problem for her to get out of her home in an emergency. Exhibit D-4 reveals that RN Randolph observed the Claimant transfer and walk/ambulate in her home, and both of these areas (walking and transferring) were assessed as requiring supervision/assistive device – not physical assistance. RN Randolph purported that based upon her observations of the Claimant, and the Claimant’s self-reported abilities, she determined the Claimant could vacate independently. RN Randolph acknowledged that she identified vacating as a functional deficit in her May 2011 assessment (Exhibit D-7), but noted that the steep ramp previously located outside of the front exit – which created a risk for fall/injury - had been replaced with wooden steps. Therefore, RN Randolph determined the Claimant could exit safely.

The Claimant testified that while she is uncertain how long it would take her to exit her home in an emergency, she would be able to get out.

The facts demonstrate that the Claimant routinely exits her home independently, and while her diagnoses of spinal stenosis and degenerative disc disease clearly affect her mobility, there is insufficient evidence to indicate the Claimant would be unable to vacate her home in the event of an emergency.

Bathing – RN Randolph cited Exhibit D-4, page 7 of 10, and noted that the Claimant reported she takes a sponge bath, or a shower with a shower chair, on her own. The Claimant denied needing any assistance with bathing at any time. The Claimant further reported that she has not had a homemaker for more than four (4) weeks, and when she did, she had not received assistance with bathing for over two (2) years.

The Claimant testified that she can transfer in and out of the bathtub if needed, but reported she no longer takes a tub bath because she slipped in the past. The Claimant indicated that she takes a “bird bath,” also known as a sponge bath. She testified that she is unable to wash her back, but is able to take care of all other bathing tasks. While it was noted that the Claimant had been without a homemaker for an extended period, she reported that she received some assistance from her niece, or friend (----).

Exhibit D-7 reveals that bathing was identified as a functional deficit in 2011 because the Claimant required assistance with transferring in and out of her tub/shower. Because the Claimant reported during the assessment that she was able to complete all tasks related to bathing independently, and transferring in and out of a bathtub is no longer a barrier (as previously noted in D-7), Respondent’s determination that she was not demonstrating a functional deficit in bathing is affirmed.

Dressing – The Claimant testified that she can dress herself. She stated that if she has a bad day, and she was not going anywhere, she would wear the clothes that she slept in, because she is always dressed. The Claimant testified that she received assistance getting dressed on the day of the hearing, but indicated she did not need assistance in May 2012. The Claimant was assigned a functional deficit in dressing in May 2011 (D-7) due to having difficulty with buttons and zippers; however, the Claimant did not indicate any barriers with her ability to dress and was observed demonstrating hand dexterity during the May 2012 assessment. The evidence demonstrates that the Claimant independently completed all tasks related to dressing in May 2012. Although the Claimant indicated there were days when she did not change her clothing, there were no physical limitations or problematic areas identified to corroborate this claim. Based on the evidence, the Claimant was not demonstrating a functional deficit in dressing at the time of the assessment.

- 8) 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.

- 9) 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.

- 10) 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 two (2) functional deficits on a PAS completed by WVMi in May 2012 – grooming and bladder incontinence.
- 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 two (2) 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 November 2012.

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