



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

September 10, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on September 6, 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  
Family Service of ----- & ----- Counties

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

-----,

**Claimant,**

**v.**

**Action Number: 12-BOR-1798**

**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 convened on September 6, 2012, on a timely appeal filed July 13, 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

-----, Homemaker, Family Service of ----- & ----- Counties

-----, Case Manager, Family Service of ----- & ----- Counties

-----, RN, Family Service of ----- & ----- Counties

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

Sarah “Betsy” Carpenter, RN, WVMI – 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 6/18/12
- D-3 Notice of Potential Denial dated 6/19/12
- D-4 Correspondence from -----, M.D. dated 8/14/12
- D-5 Notice of Decision dated 7/5/12
- D-6 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 7/26/11

**VII. FINDINGS OF FACT:**

- 1) On June 18, 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 6/18/12).
- 2) On or about June 19, 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 Dressing.

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 July 5, 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 Dressing.

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 dressing). The Department, however, maintained that the medical assessment completed in July 2012 by Sarah “Betsy” Carpenter, 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 walking, transferring and medication administration. The following will address each of the contested areas:

**Transferring and Walking** - Evidence reveals that the Claimant was assessed at a Level-2 (supervised/assistive device) in the functional areas of transferring and walking. RN Carpenter cited her documentation in Exhibit D-2 and testified that the Claimant reported she has a regular bed, a raised toilet seat, a shower chair, and grab bars in her bathroom, and is able to transfer independently. RN Carpenter further testified that the Claimant indicated she uses a quad cane and a walker to ambulate. The Claimant reported that she uses her cane for short trips when walking to the bank and noted that her “worker” will walk with her to, and from, the bank. The Claimant and her representatives provided testimony to indicate the Claimant’s ability to ambulate varies with the weather (extreme heat and cold) and that she sometimes requires physical assistance to ambulate. However, because the assessment is based on the Claimant’s ability to walk in her climate-controlled home, weather is not a factor. In addition, RN Carpenter documented four (4) different occasions in Exhibit D-2 where she observed the Claimant transfer and walk without the need for physical assistance. The evidence fails to demonstrate that the Claimant requires hands-on physical assistance (Level-3) with transferring or walking. As a result, a functional deficit in transferring or walking cannot be awarded.

**Medication Administration** – In order to qualify for a deficit in medication administration, an individual must be unable to put the medication in, or on his/her body. This could include placing a pill in their mouth, injections, pain patches, creams etc... Evidence submitted in the Claimant's case reveals that she denies needing anyone to place her pills in her mouth and she can self-administer her inhaler. While it was noted that the Claimant's boyfriend will sometimes check to make sure the Claimant has taken her medication, this level of assistance is consistent with prompting/supervision. The evidence confirms the Claimant is not demonstrating a functional deficit in medication administration.

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 June 2012 – vacating a building [in the event of an emergency], bathing, grooming and dressing.
- 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 September 2012.**

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