



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

October 4, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 26, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed that you do not meet the medical eligibility requirements of the program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review  
Kay Ikerd-Bureau of Senior Services

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

**IN RE:   -----,**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1908**

**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 convened on September 26, 2012, on a timely appeal filed July 30, 2012.

**II.   PROGRAM PURPOSE:**

The Aged and Disabled Waiver program, hereinafter ADW, 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 witness

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department representative

Melissa Bell, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the 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 deny the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

**V. APPLICABLE POLICY:**

Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening dated June 26, 2012
- D-3 Notice of Potential Denial dated June 29, 2012
- D-4 Additional Information from Lifetime Management Services, LLC (illegible)
- D-5 Notice of Denial dated July 18, 2012

**VII. FINDINGS OF FACT:**

- 1) On June 26, 2012, Melissa Bell, West Virginia Medical Institute (WVMI) nurse, assessed the Claimant to determine his medical eligibility for the Aged and Disabled Waiver program using the Pre-Admission Screening Assessment (PAS) (Exhibit D-2).
- 2) During the assessment, Ms. Bell identified the Claimant's functional deficits as vacating a building, eating, bathing and grooming.
- 3) On June 29, 2012, the Claimant was issued a Notice of Potential Denial (Exhibit D-3). This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

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.

Based on your PAS, you have deficiencies in only 4 areas-vacate a building, eating, bathing and grooming.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On July 9, 2012, The Homemaker agency submitted additional information (Exhibit D-4) from the Claimant's physician to WVMi. This provided exhibit is illegible; however, the Claimant's witness indicated the prescription pad note read, "Patient unable to administer meds due to blindness needs some to read and label bottles. Needs assistance with shoes and socks due to dyspnea." The assessing nurse documented this additional information in the PAS assessment.
- 5) On July 18, 2012, the Claimant was issued a Notice of Denial (Exhibit D-5), informing him that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been Terminated/Denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the right to dispute this decision and ask for a hearing.

Reason for decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form), indicated deficiencies in 4 areas-vacate a building, eating, bathing and grooming.

- 6) The Claimant contended that additional deficits should have been awarded in the areas of dressing and medication administration.

The following addresses the contested areas:

**Dressing**-The Claimant acknowledged that during the assessment he indicated that he did not have difficulties putting on his sandals. However, the Claimant stated that during the winter months, he experiences shortness of breath when putting on shoes and socks as a result of high blood pressure. Ms. Bell indicated that she did not award a deficit in the contested area because the Claimant was able to touch his ankle and reported that he dressed himself the morning of the assessment. Additionally, Ms. Bell indicated that on the day of the assessment,

she did not observe the Claimant experiencing any shortness of breath and assessed the Claimant as a Level 1, Self/Prompting with dressing.

**Medication Administration**-The Claimant, who is blind, testified that he requires assistance with administering his medications to ensure he is taking the correct pill. The Claimant indicated that in the future he may be prescribed additional medications and would require assistance for safety purposes. Ms. Bell testified that in order for a deficit to be awarded in the contested area, policy requires that the individual has to be unable to put a pill in his or her mouth and be unable to administer the pill. Ms. Bell indicated that the Claimant was physically able to administer his own medications; therefore, she assessed the Claimant as able to administer his medications with prompting and supervision and did not award a deficit.

- 7) Ms. Bell made the following findings in the June 26, 2012, PAS (Exhibit D-2) regarding the contested areas:

Dressing-Applicant was dressed in t shirt and shorts with sandals. Applicant reports he is having difficulty picking out clothing due to blindness. Applicant reports he is able to put on shirts/pants and shoes by self. Applicant reports he is able to zip and button. Applicant reports he dressed self this am. Sandals had Velcro.

Medications-Medications gathered by applicant, medication names taken from pill bottles. Medications returned to applicant. Medications are checked by family or friends when purchased due to blindness and applicant reports he is able to open pill bottles and place pills in mouth. Applicant denies needing reminders to take medications.

- 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 ADW 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) Policy requires that in order to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five health areas on the Pre-Admission Screening assessment (PAS).

- 2) During the medical assessment, the Claimant demonstrated functional deficits in the areas of vacating a building, eating, bathing and grooming.
- 3) The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant's functional abilities based on information reported at the time of the assessment.
- 4) Policy requires that a deficit is awarded in the area of dressing when the individual is assessed at a Level 2 or higher, meaning that physical assistance is required in the functional area. During the assessment, the Claimant reported that he was able to dress himself, but acknowledged difficulties selecting clothing due to his blindness. Because the Claimant was able to dress himself during the assessment, the WVMi nurse was correct in assessing the Claimant as a Level 1 Self/Prompting and an additional deficit cannot be awarded.
- 5) Policy requires that a deficit is awarded in the area of medication administration when the individual is not capable of administering his or her own medication. While the Claimant has difficulties in the contested area due to his blindness, a deficit cannot be awarded because the Claimant reported his ability to open prescription bottles and place pills in his own mouth. Therefore, the WVMi nurse was correct in assessing the Claimant as able to administer his own medications and an additional deficit cannot be awarded.
- 6) The Claimant's total number of deficits remain at four; therefore, the Department was correct in its decision to deny the Claimant's application for Aged and Disabled Waiver services.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's medical eligibility under 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 \_\_\_\_ day of October 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**