



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, WV 25305

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

October 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 4, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical eligibility under the Title XIX Aged/Disabled Waiver (ADW) Program.

In arriving at a decision, the Deputy Director 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 your hearing reveals that you do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program based on the results of your July 2, 2012 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your medical eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
Deputy Director
State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
A Special Touch for Seniors

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1921

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF DEPUTY DIRECTOR

I. INTRODUCTION:

This is a report of the Deputy Director 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, and was convened on October 4, 2012.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver Program (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 witness
-----, Claimant's witness
-----, Claimant's witness

Kay Ikerd, Department representative
Brenda Myers, Department's witness
Presiding at the hearing was Cheryl Henson, Deputy Director for the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to terminate the Claimant's medical eligibility for benefits under the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Excerpts from Aged/ Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment completed July 2, 2012
- D-3 Potential Denial notice dated July 10, 2012
- D-4 Notice of Decision dated July 24, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program during the month of July 2012.
- 2) Brenda Myers, a Registered Nurse (RN) employed with West Virginia Medical Institute (WVMI), completed a medical assessment (D-2) on July 2, 2012, in the Claimant's home, and determined that she no longer met the medical eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment, and the Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of Vacating a Building, Bathing, and Grooming.
- 3) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (D-1) – MEMBER ELIGIBILITY, provides in part:

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.
- 4) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-1) states in pertinent part:

APS Healthcare/IRG is the contracted entity that is responsibility [sic] for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate Service Level that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the State.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1, (D-1) Medical Criteria, states in pertinent part:

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.

- 6) During the hearing, the RN discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the RN explain her findings, the Claimant disagreed with her conclusions, and contended that additional deficits should have been awarded in the areas of *Eating and Dressing*.
- 7) In the area of *Eating*, the Claimant was rated as being able to eat with supervision and/or assistive devices. Policy specifies that to receive a deficit in the category of Eating, an individual must require the physical assistance of at least one (1) individual to eat. Food preparation is not considered. The WVMi RN stated that she considers whether an individual can cut up meats without physical assistance in rating this category. The RN recorded the following pertinent information during the assessment:

Eating: She states she feeds herself and can cut up her own food. She states HM [homemaker] is really good and that's the first thing she does when she arrives in the morning is to ask her what she wants to eat and prepares food for her. I asked her once food is cooked/prepared if she needs assistance from HM or from her mother if it is after HM service hours to cut up food for her to eat and she denies. I asked her if she has firmer type meats such as steak, chicken or pork chop if she can use a knife/fork and cut up her own meats to eat and she states she can. She denies that HM or her mother whom she mentioned as informal support has to cut up food for her in order for her to eat. Grips were strong and equal in both hands.

The Claimant stated that it has been a long time since she has eaten meat, but added that she felt like she could cut it up. She now states that she is not sure if she can cut up meats. She stated that she eats microwavable foods. She stated that for tough foods she tears the food with her fingers because it is easier to do with her hands shaking. The Claimant's homemaker, -----, stated that she often throws food out that the Claimant has not eaten because it was too tough for her to eat. She added that the Claimant does not ask her to do things for her. The Claimant's RN Case Manager, -----, stated that the Claimant told her she could not use a knife and fork. The RN Case Manager also stated that she believes the Claimant was exaggerating when she told the RN from WVMi that she was able to eat without physical assistance.

- 8) In the area of *Dressing*, the Claimant was rated as being able to dress unassisted or with prompting and/or supervision. Policy specifies that an individual must require the physical assistance of at least one (1) individual to receive a deficit in this area. The RN documented the following relevant information during the PAS assessment:

Dressing: She states she dresses herself. She states she wears elastic banded pants and sits down and puts legs through and then stands and pulls them up. She puts her own shirts over her head and puts her arms through the sleeves. She states every now and then she will wear a shirt that buttons but when she does she can button it herself. She states she doesn't [*sic*] wear bras. She states she can put her own socks herself either by bending over or crossing her legs to reach her feet. For shoes she puts them on herself as well and wears penny loafer style shoes and can just slide her feet into. RN again asked her if she needed any type of assistance for dressing and she again denies.

The Claimant stated she buys her clothing in a size larger than needed so she can pull on and off easily because she becomes short of breath. She stated she could not dress in a hurry in the event of an emergency due to the shortness of breath. She added that her legs shake so bad that she often gets off balance. The Claimant's homemaker stated that she often helps the Claimant put socks and shoes on. The Claimant did not inform the WVMi RN during the PAS assessment that she needed physical assistance to dress at times.

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 ADW Program.
- 2) The Claimant received three (3) deficits during the July 2012 PAS assessment, in the categories of *Vacating a Building*, *Bathing*, and *Grooming*. She must be assessed two (2) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings she received in the categories of *Eating and Dressing*.
- 3) The totality of the evidence and testimony regarding the category of *Eating* is not sufficient to support the award of an additional deficit. Policy specifies that an individual must require the physical assistance of at least one (1) individual to receive a deficit in this category. The totality of the evidence supports that the Claimant reported to the WVMi RN at the time of the PAS assessment that she did not need physical assistance to eat.
- 4) The totality of the evidence and testimony regarding the category of *Dressing* is not sufficient to support the award of a deficit. Policy specifies that an individual must require physical assistance to dress to receive a deficit in this area. The Claimant and clearly communicated to the RN during the PAS assessment that she dresses unassisted and did not indicate that she ever requires physical assistance. The Department

correctly rated the Claimant in this category based on her observations and the Claimant's responses to questions.

- 5) As result of the above conclusions, the Claimant has established no additional deficits, and has not established her continued medical eligibility for the ADW program.
- 6) The Department was correct in its decision to terminate medical eligibility in the ADW program based on the results of the July 2012 PAS assessment.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's medical eligibility under the Title XIX ADW Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 10th Day of October 2012.

**Cheryl Henson
Deputy Director**