



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

November 19, 2012

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 7, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to deny your application for 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 meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny your application for 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

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

IN RE: ----,

Claimant,

v.

ACTION NO: 12-BOR-2128

**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 videoconference on November 7, 2012, on a timely appeal filed August 22, 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

---- ----, Claimant's Wife and Representative

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Teena Testa, 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 under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its decision to deny Claimant's application for the Aged and Disabled Home and Community-Based Waiver Program based on a Pre-Admission Screening (PAS) conducted on July 23, 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 July 23, 2012
- D-3 Notice of Potential Denial, dated July 25, 2012
- D-4 Notice of Decision, dated August 9, 2012

VII. FINDINGS OF FACT:

- 1) Claimant applied for the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of his application for the program, a nurse from the West Virginia Medical Institute (WVMI) performed a Pre-Admission Screening (PAS) in his home on July 23, 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 July 23 PAS, testified that the Claimant, Claimant's wife 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 in the event of an emergency, bathing, dressing and administering medications, and therefore Claimant did not meet the medical eligibility criteria for the Program. The Department sent a Notice of Potential Denial (Exhibit D-3) to Claimant on July 25, 2012. This notice outlined the areas in which Claimant was assessed deficits and stated, "If you believe you have additional information regarding your medical condition that wasn't considered, please submit those records to WVMi within the next 2 weeks." Department's Witness added that no additional information regarding Claimant was submitted within the next two weeks, so the Department issued a Notice of Decision (Exhibit D-4) dated August 9, 2012, informing Claimant his application was denied.
- 4) The Claimant's Representative asserted that Claimant should have received three (3) additional deficits on the July 23 PAS, for item #26, functional abilities, for (a) eating, (g) orientation and (i) walking.

- 5) **Eating:** The WVMi nurse rated Claimant “Self/Prompting” on this item and wrote in the “Nurse’s overall comments” section of the PAS, “[Claimant] is able to feed self. Once the meal has been prepared [Claimant] notes he is able to cut up his meats and vegetables. [Claimant] notes he could cut up steaks and pork chops himself. He denies needing any assistance with cutting up his foods.” Claimant’s Representative stated that Claimant is unable to prepare his own meals due to his memory loss. Department’s Representative responded that by policy, meal preparation may not be considered as part of the functional ability of eating. She added that the assessing nurse only could evaluate Claimant’s ability to cut up his foods and feed himself.
- 6) **Orientation:** The WVMi nurse rated Claimant at Level 1, “Oriented,” on this item. She wrote in the “Nurse’s overall comments” section, “[Claimant] was able to state his name . . . Was able to recite city and state he lives in, [Claimant] aware of his date of birth and his telephone number. Was able to tell me the current month, year, [Claimant] notes it is morning.” Claimant’s Representative stated that because of Claimant’s short-term memory loss, there are times when he suffers from confusion. She stated that he normally is oriented, but he takes several medications to keep himself oriented. She added that when he has a seizure, afterwards he is combative and disoriented. Department’s Representative stated that in order to assess him with a deficit for orientation, the WVMi nurse would have to find that he did not know who he was, where he was, or what day, month or year it was. She added that even if he only was oriented to only one of the three aspects of this functional ability – person, place, or time – he could not be assessed with a deficit for orientation.
- 7) **Walking:** The WVMi nurse rated Claimant at Level 2, “Supervised/Assistive Device,” at this item and wrote in the “Nurse’s overall comments” section, “Assistive device used: uses furniture. Wife notes he has a walker but he is strong enough to not have to use it now. Observation of ambulation: [Claimant] was sitting on the couch, he did roll onto his side a little and used the couch to help him pull up from. He does hold onto the furniture as he walks in the home. Gait was slow and steady on the day of the assessment. He notes he did use a walker for a long time until he started walking on his own. He denies using a walker at this time.” Claimant’s Representative stated that their home is two-story, and Claimant must sleep on a couch on the first floor of the home because he cannot walk up the stairs to their bedroom on the second floor. She added that she stated this to the assessing nurse during the PAS, but her husband still did not receive a deficit for walking. Department’s witness testified that she did note the information given to her by the Claimant and his wife concerning his inability to walk up and down stairs. She stated she entered this information in her comments on the functional ability of transferring. The “Nurse’s overall comments” section states the following under the functional ability of transferring: “[Claimant] states he sleeps on the couch. Wife notes he is not able to go upstairs to his bedroom.” Department’s Witness stated that at the time of the assessment, she was assessing how well the Claimant walked in his living room, and she did not take into consideration his ability or lack thereof to

negotiate the stairs in his home. She added that upon reflection, she should have assessed Claimant at Level 3 for walking and assessed him with a deficit in this area. Department's Representative did not contest the assertion on the part of Claimant's Representative that a deficit should have been assessed for walking.

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 July 23, 2012, Claimant was assessed with four (4) deficits.
- 2) The Department was correct in its decision not to assess a deficit in the functional ability of eating. Policy states that food preparation is not an aspect of this ability.
- 3) The Department was correct in its decision not to assess a deficit in the area of orientation. The WVMi nurse testified and recorded on the July 23 PAS that Claimant was oriented to person, place and time, and during the hearing, Claimant's wife agreed that this was true unless Claimant was recovering from a seizure.
- 4) The Department was incorrect in its decision not to assess a deficit in the area of walking. The Department's Witness testified that upon consideration of all the information contained in the July 23 PAS, she should have assessed Claimant's walking ability at Level 3 instead of Level 2, which would have resulted in an additional deficit.
- 5) Claimant's representative and witnesses provided evidence to support a finding that one additional deficit should have been assessed on the July 23 PAS. Therefore, the required five (5) deficits have 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 **reverse** 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 19th Day of November, 2012.

Stephen M. Baisden
State Hearing Officer