



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 21, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on November 14, 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

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

----,

Claimant,

v.

Action Number: 12-BOR-2190

**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 telephonically on November 14, 2012, on a timely appeal filed September 4, 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

----, RN, CM, ----

----, Claimant's homemaker/witness

Kay Ikerd, RN, BoSS – Department's representative

Brenda Myers, RN, WVMI – Department's witness

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 7/30/12
- D-3 Notice of Decision dated 8/23/12
- D-4 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 7/19/11

VII. FINDINGS OF FACT:

- 1) On July 30, 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 7/30/12).
- 2) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated August 23, 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: 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.

- 3) 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 Brenda Myers, RN, West Virginia Medical Institute (WVMI), fails to identify five (5) functional deficits.
- 4) The Claimant and her witnesses contended that she remains medically eligible to participate in the ADW Program, as she should have been awarded a deficit in bladder incontinence. The following will address the contested area:

Bladder Incontinence – Brenda Myers, RN, West Virginia Medical Institute (WVMI) noted that the Claimant was awarded a deficit for bladder incontinence in her previous assessment (Exhibit D-4), but noted that information is not available to her when she completes a medical assessment. RN Myers reported that she was made aware the Claimant has difficulty hearing, but noted she did not have to raise her voice to a higher level or repeat herself during the assessment. RN Myers testified that the Claimant originally reported she has “pee accidents” once in a while, and when asked to clarify the frequency, the Claimant consulted with her homemaker and reported accidents occur approximately once a month. The Claimant’s homemaker, ----, who was present during the assessment, was asked to confirm, and she reported that the Claimant has episodes of urine incontinence one or two times per week. RN Myers testified that the Claimant denied the use of incontinent pads, but indicated she keeps a pad on her bed.

----, the Claimant’s Homemaker RN, reported that the Claimant was unable to hear the question about bladder incontinence, and consequently provided inaccurate information.

----, the Claimant’s homemaker, testified that the Claimant was embarrassed to discuss this matter. Ms. ---- acknowledged that she told RN Myers that episodes of urinary incontinence occurred one or two times per week - when asked the average - but insisted that she was cut off and not allowed to elaborate. She stated that she wanted to tell RN Myers that sometimes it happens every day, but she was not permitted the opportunity to explain. Ms. ---- stated that when RN Myers reviewed her findings at the conclusion, “she wanted to skip over that part” and she was again “cut off.”

RN Myers proffered rebuttal testimony to indicate that she has never cut anyone off and that she would not have asked for Ms. ----’s input if she did not value what she had to say. RN Myers further noted that there is a two-week period following the assessment in which additional medical documentation can be submitted by the Claimant, her physician, the case manager or the Homemaker RN, regarding any area of disagreement. RN Myers reported that while there was additional information submitted, none of the information provided supported the establishment of a deficit in bladder incontinence.

- 5) 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.
- 6) 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.
- 7) 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 July 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. The contention that inaccurate information was secured due to the Claimant's inability to hear, or that she was embarrassed to discuss bladder incontinence, is unconvincing. The Claimant's homemaker attended the assessment and acknowledged that she reported the Claimant's urinary incontinence occurred "on average" one or two times per week. The allegations that RN Myers "cut off" the Claimant's homemaker when assessing urinary incontinence simply has no merit. In addition, none of the additional medical documentation submitted in the two-week period following the assessment addressed urinary incontinence.
- 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 November 2012.

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