



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

December 7, 2012

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 15, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate 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 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 do not meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your participation in 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-2225

**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 telephone conference call on November 15, 2012, on a timely appeal filed September 10, 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 Representative
----, ----, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Kim Sang, 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 proposal to terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening (PAS) conducted on August 16, 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 August 16, 2012
- D-3 Notice of Potential Denial, dated August 17, 2012
- D-4 Notice of Decision, dated September 4, 2012
- D-5 Pre-Admission Screening (PAS) assessment conducted on September 29, 2011

Claimant's Exhibits:

- C-1 Collection of medical records for Claimant from ----, ----

VII. FINDINGS OF FACT:

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of his continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in his home on August 16, 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 August 16 PAS, testified that the Claimant, Claimant's advocate from ----, and she were present for the assessment session. She stated that she assessed Claimant with one (1) deficit on the PAS, for vacating a building during an emergency, and therefore Claimant did not meet the medical eligibility criteria for continuing participation in the Program. The Department sent a Notice of Potential Denial to Claimant on August 17, 2012 (Exhibit D-3), which stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMi *within the next 2 weeks.*" Department's Witness testified that WVMi received no additional medical records on Claimant's behalf. The Department sent a Notice of Decision (Exhibit D-4) to Claimant on September 4, 2012, informing him that his participation in the ADW program was terminated.
- 4) Claimant and his Representative asserted that he should have received seven (7) additional deficits on the PAS, on item #26, functional abilities, for (a) eating, (b) bathing, (c) dressing, (d) grooming, (h) transferring, (i) walking, and (j) wheeling.

- 5) **Eating:** The WVMi nurse rated Claimant “Self/Prompting” on this item and wrote in the “Nurse’s overall comments” section of the PAS, “States he is able to feed himself – he has no trouble with cutting up his foods.” Claimant stated that he was able to make certain foods such as sandwiches for himself, but he could not cook regular meals. Department’s Representative pointed out that by policy, food preparation could not be considered part of the functional ability of eating. Claimant’s Witness stated that Claimant’s hands are becoming stiff, so he needs help in cutting up his foods. Department’s Witness stated that during the August 2012 PAS, Claimant was adamant that he could cut up his foods and feed himself without difficulty.
- 6) **Bathing:** The WVMi nurse rated Claimant at Level 1, “Self/Prompting,” for this functional ability. She wrote in the “Nurse’s overall comments” section, “He gets in the shower – he is able to transfer in and out of the shower himself – he is able to wash his own body. He states that the [homemaker] stands outside the bathroom just in case he would fall, states she does not physically help him in or out nor does she help him in washing his body.” Claimant stated that due to the fact that one of his legs is amputated, he needs help getting into and out of the shower stall. Department’s Witness stated that during the August 2012 PAS, Claimant reported he did not require help with bathing.
- 7) **Dressing:** The WVMi nurse rated Claimant “Self/Prompting,” at this item and wrote in the “Nurse’s overall comments” section, “Upper body – he is able to get his own shirt on; lower body – he is able to get his own lower body dressed; socks/shoes – he can get his own shoes and socks on; buttons/zippers/snaps – he denies any trouble with any of these.” Claimant stated that he was not able to get his clothes out of his dresser and closet because his right leg became fatigued and he had to rest afterwards. He stated that while dressing, when he had to stand up to pull up his pants and button his shirt, someone had to hold to him and steady him. Department’s Witness stated that during the PAS, Claimant reported he could dress himself without assistance.
- 8) **Grooming:** The WVMi nurse rated Claimant “Self/Prompting” on this item and wrote in the “Nurse’s overall comments” section, “Hair – he is able to wash his own hair; oral care – he is able to do his own oral care; nail care – he is able to trim his own fingernails and toenails; shaving – he is able to shave himself.” Claimant stated that he has trouble bending over, and he gets winded when he does, so he cannot bend to trim his toenails. He stated that his homemaker did this for him once, but does not do so now. He added that she does not do so because he is diabetic and his toenails should be trimmed by a podiatrist. Department’s Witness stated that during the PAS, Claimant reported that he could brush his teeth, shave and trim his nails without assistance.

- 9) **Transferring:** The WVMi nurse rated Claimant “Supervised/Assistive Device” on this item and wrote in the “Nurse’s overall comments” section, “In/out of chair – he is able to stand and pivot to get in his recliner in the living room. In/out of bed – he is able to stand and pivot around – he sleeps on the couch most of the time.” Claimant stated that he has difficulty with his right leg now, and it is getting hard for him to get from a sitting to a standing position. Department’s Witness stated Claimant reported he was able to transfer without difficulty and demonstrated this to her on the day of the PAS.
- 10) **Walking:** The WVMi nurse rated Claimant “Supervised/Assistive Device” on this item and wrote in the “Nurse’s overall comments” section, “Assistive device used – walker. Observation of ambulation – states he is able to walk with his walker – states he kind of hops down hallway [due to the fact that] he cannot get his wheelchair in hall – he has crutches he uses outside. Falls – denies any falls.” Claimant stated that when he walks down the hallway from the living room to the bedroom or bathroom of his home, his right leg hurts so badly he has to stop to rest. Department’s Witness reported that during the PAS, Claimant reported that he could walk with his walker or crutches. She stated that on the August 2011 PAS (Exhibit D-5), Claimant reported that he was having problems at his leg amputation site, and as such was not able to use his crutches. Therefore, she said, he was awarded a deficit for walking in 2011. She added that for the August 2012 PAS, Claimant’s amputation site was healed and he did not have the same difficulty as he did the previous year.
- 11) **Wheeling:** The WVMi nurse rated Claimant “Wheels Independently” on this item and wrote in the “Nurse’s overall comments” section of the PAS, “He needs some situational assistance with his wheelchair.” Department’s Witness stated that there was a typographical error on the August 2012 PAS. She stated Claimant should have been rated at Level 3, “Situational Assistance Needed” at this functional ability. Department’s Representative pointed out that even though Claimant was rated at Level 3 for wheeling, which does indicate a deficit, no deficit may be assessed for wheeling unless an individual were rated at Level 3 for walking. She added that Claimant was rated at Level 2 for walking, with no deficit assessed, so he may not receive a deficit for wheeling.

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 August 16, 2012, Claimant was assessed with one (1) deficit.
- 2) The Department was correct in its decision not to assess a deficit in the area of eating. The WVMi nurse recorded on the August 2012 PAS that Claimant reported he could feed himself, and by policy, food preparation may not be considered as part of the functional ability of eating.

- 3) The Department was incorrect in its decision not to assess a deficit in the area of bathing. Claimant has had a leg amputated, and the WVMi nurse should have questioned him further in assessing his ability to get into and out of his bathtub.
- 4) The Department was incorrect in its decision not to assess a deficit in the area of dressing. Claimant testified he could not stand to pull up his pants without assistance, and the WVMi nurse should have questioned him further about his ability to dress himself, given the fact that he has had a leg amputated.
- 5) The Department was correct in its decision not to assess a deficit in the area of grooming. The WVMi nurse testified and recorded on the August 2012 PAS that Claimant reported he could brush his teeth and shave, and his toenails must be trimmed by a podiatrist.
- 6) The Department was correct in its decision not to assess a deficit in the area of transferring. The WVMi nurse testified and recorded on the August 2012 PAS that Claimant demonstrated his ability to transfer.
- 7) The Department was correct in its decision not to assess a deficit in the area of walking. The WVMi nurse testified and recorded on the August 2012 PAS that Claimant could walk with a walker, and Claimant testified that he could do so, although it made his right leg sore.
- 8) The Department was correct in its decision not to assess a deficit in the area of wheeling. Policy is clear that if an individual is not assessed at Level 3 for walking he or she may not receive a deficit for wheeling. Claimant was assessed at Level 2 for walking, so no deficit will be assessed for wheeling.
- 9) Claimant's representative and witnesses provided evidence to support a finding that two (2) additional deficits should have been assessed, for bathing and dressing, on the August 2012 PAS. However, the required five (5) deficits have not 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 **uphold** 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 7th Day of December, 2012.

Stephen M. Baisden
State Hearing Officer