



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

November 15, 2012

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 8, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for Aged/Disabled Waiver services.

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. These regulations state that to be medically eligible for services, an individual must receive five deficits on the assessment tool known as the Pre-Admission Screening form (Aged/Disabled Home and Community Based Waiver Services Manual § 501.5.1).

The information submitted at your hearing revealed that you do not meet the medical criteria set forth in policy to receive Aged/Disabled Waiver services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny you services under the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau for Senior Services

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2236

**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 held on November 8, 2012. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed September 4, 2012.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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 Representative

Pam Pushkin, RN, Bureau for Senior Services (testified by phone)

Courtenay Smith, RN, West Virginia Medical Institute (testified by phone)

Presiding at the hearing was Kristi Logan, 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's denial of Claimant's Aged/Disabled Waiver services is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual §501.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual §501.5
- D-2 Potential Denial Letter dated July 30, 2012
- D-3 Denial Letter dated August 14, 2012
- D-4 Pre-Admission Screening dated July 12, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the Aged/Disabled Waiver program on July 12, 2012. A Pre-Admission Screening (PAS) (D-4) was completed that date by Courtenay Smith, RN with the West Virginia Medical Institute (WVMI).

Claimant was assessed with deficits in the areas of vacating a building, bathing and grooming. Two (2) additional deficits are required for Claimant to receive Aged/Disabled Waiver services.

- 2) The areas of the July 2012 PAS in contention are orientation, transferring, walking and medication administration. ---- ----, Claimant's representative and sister-in-law, testified that Claimant does not know which day it is and needs reminders of when to take his medications. Ms. ---- stated Claimant pushes himself up from a seated position using the chair for assistance and also holds onto the walls or other furniture when walking. Ms. ---- stated Claimant has a history of falls.

- 3) Pertinent parts of the July 2012 PAS (D-4) document:

Orientation: Applicant identified himself and where he was. He was unable to identify his birthdate [*sic*] or any aspect of the date.

Transferring: Member pushes up on furniture at times in the morning to transfer due to stiffness. He can transfer without pushing up at times as well depending on how he is feeling.

Walking: Member walks in the home holding onto walls for support at times to keep his balance. He recently fell at his brother's home and bruised his ribs. There are two steps up from the family room in ----'s house and he has to hold onto the door facing to walk from the family room to the dining room.

Medication Administration: ---- sets his medications up in a pill planner for him. He does not know what day to take and she has to point out which ones to take and he can place them into his own mouth. He forgets to take them without prompting.

4) Aged/Disabled Waiver Policy Manual § 501.5.1.1 states (D-1):

Medical Criteria

An individual must have five (5) deficits on the 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

- (a) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
- (b) Bathing - Level 2 or higher (physical assistance or more)
- (c) Dressing - Level 2 or higher (physical assistance or more)
- (d) Grooming - Level 2 or higher (physical assistance or more)
- (e) Bowel Continence - Level 3 or higher; must be incontinent
- (f) Bladder Continence – Level 3 or higher; must be incontinent
- (g) Orientation - Level 3 or higher (totally disoriented, comatose)
- (h) Transfer - Level 3 or higher (one-person or two-person assistance in the home)
- (i) Walking - Level 3 or higher (one-person assistance in the home)
- (j) 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 own medications

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment tool in order to qualify medically for the Aged/Disabled Waiver program. Claimant received three (3) deficits on his July 2012 PAS.
- 2) Claimant was determined to be oriented to person and place, but was unaware of the date. Claimant was rated as a level 2 in orientation – intermittent disorientation. To receive a deficit in orientation, the individual must a level 3 or higher - totally disoriented or comatose. Claimant was correctly assessed as a level 2 in orientation.
- 3) Testimony and documentation of the PAS indicate Claimant can transfer and walk with assistance of furniture of walls. Claimant was assessed as a level 2 in transferring and walking – supervision or assistive device. To receive deficits in transferring and walking, an individual must be a level 3 or higher – one- or two-person assistance to transfer and ambulate. Claimant does not require hands-on physical assistance in transferring or walking and was correctly assessed as a level 2 in these areas.
- 4) Claimant was assessed as requiring prompting or supervision in medication administration, which does not qualify as a deficit. To receive a deficit in this area, an individual must be physically unable to administer his own medications. Claimant has the ability to place his pills in his mouth and was correctly assessed as requiring prompting/supervision with medication administration.
- 5) Based on the information provided, Claimant does not meet the medical eligibility required to participate in the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant services under the Aged/Disabled Waiver program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th day of November 2012

Kristi Logan
State Hearing Officer