



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

February 28, 2012

c/o -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 28, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your Medicaid 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed 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 action of the Department to deny your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2566

**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 on a timely appeal, filed November 9, 2011.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program, hereinafter ADW, 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 Attorney-In-Fact
Kay Ikerd, RN-Bureau of Senior Services (BoSS)
Teena Testa, RN-West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips , 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 was correct in its decision to deny the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening Assessment dated August 16, 2011
- D-3 Notice of Potential Denial dated August 22, 2011
- D-4 Notice of Denial dated September 8, 2011

VII. FINDINGS OF FACT:

- 1) On August 16, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine her medical eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Teena Testa, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Testa identified the Claimant's functional deficits as grooming, dressing, and continence.
- 3) On August 22, 2011, the Claimant was issued Exhibit D-3, Notice of Potential Denial. This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual.

Based on your PAS, you have deficiencies in only 3 areas-grooming, dressing and continence.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On September 8, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, informing her that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been Terminated/Denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the right to dispute this decision and ask for a hearing.

Reason for decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form), indicated deficiencies in 3 areas-grooming, dressing and continence.

- 5) The Claimant's representative contends that additional deficits should have been awarded in the areas of vacating during an emergency, eating and medication administration. The following addresses the contested areas:

Vacating during an Emergency-----, Claimant's Attorney-In-Fact indicated that the Claimant would experience difficulty vacating her residence in the event of an emergency without supervision. ----- indicated that her mother could physically vacate, but indicated that she may not be aware during an emergency situation. Ms. Testa assessed the Claimant as being able to physically vacate her residence in the event on emergency with supervision and documented her findings in the assessment as, "In the event of an emergency client states with the home being level she feels she could get out of the home. Becky states she does use the 4 prone cane and Becky states she loses [sic] her balance walking across the home. Becky states if something happened [sic] she could get out of the home. I feel the feelthe client may need supervision to exit the home."

Policy requires that a deficit in the contested area is awarded when the individual is physically or mentally unable to vacate a building in the event of an emergency. Policy specifies that an individual's ability to vacate a building independently and with supervision are not considered deficits. Information related during the assessment revealed that the Claimant possess the ability to vacate her residence with supervision in the event of an emergency. Therefore, the assessing nurse correctly assessed the Claimant's ability to vacate and an additional deficit in the contested area cannot be awarded.

Eating----- indicated that her mother has no difficulties with eating, only with food preparation. Ms. Testa assessed the Claimant as a Level 1 Self/Prompting and documented her

findings in the assessment as, “Client states she is able to feed herself. Once the meal has been prepared client states she could cut up her meats and her vegetables. Client states she could cut up her steak and her pork chops, daughters agree with this also.”

Policy requires that a deficit is awarded in the contested area when the individual is assessed as a Level 2 or higher, meaning they require physical assistance to obtain nourishment. Policy notes that preparation is not considered when awarding a deficit. Information related during the assessment revealed that the Claimant experiences the majority of her difficulties with food preparation; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

Medication Administration----- indicated that she fills her mother’s weekly medication planner and must phone her mother to remind her to take her medications. Ms. Testa assessed the Claimant as being able to administer her own medications with supervision and documented the following in the PAS assessment, [REDACTED] keeps her meds at her house and she puts them in a weekly container. [REDACTED] states she calls to remind her to take her meds [sic] and she still forgets to take them.”

Policy requires that a deficit is awarded in the contested area when the individual is incapable of administering his/her own medication. Testimony revealed that the Claimant was able to administer her medications with prompting and supervision; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

- 6) 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.

- 7) 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 ADW 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.

- 8) 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) Policy requires that to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five health areas on the Pre-Admission Screening assessment (PAS).

- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of grooming, dressing and continence.
- 3) Testimony and evidence presented during the hearing did not reveal additional deficits.
- 4) The Claimant's total number of deficits remain at three; therefore, the Department was correct in its decision to deny the Claimant's application for the Aged and Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department in denying the Claimant's Aged and Disabled Waiver benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of February , 2012.

Eric L. Phillips
State Hearing Officer