



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

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

March 29, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 27, 2012. Your hearing request was based on the Department of Health and Human Resources' decision 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
Public Partnerships, LLC, Morgantown, WV

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

IN RE: -----,
 Claimant,

v.

ACTION NO: 12-BOR-372

**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 conducted by telephone conference call on March 27,
2012, on a timely appeal filed December 13, 2011. This hearing was originally scheduled
for February 22, 2012, but was rescheduled at the Claimant's request.

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 Mother and Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Anna Matney, RN, West Virginia Medical Institute, 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 November 21, 2011.

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 November 21, 2011.
- D-3 Potential denial letter from APS Healthcare, dated November 23, 2011.
- D-4 Denial letter from APS Healthcare, dated December 9, 2011.
- D-5 Pre-Admission Screening (PAS) assessment conducted on September 24, 2010.

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 November 21, 2011. (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 his/her own medications.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on November 21, 2011 in the Claimant's home. She stated that the Claimant, his mother and father and she were present for the assessment. She added that she assessed Claimant with one (1) deficit on the PAS, for dressing, and therefore he did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department issued a Notice of Potential Denial dated November 23, 2011. (Exhibit D-3.) This notice 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." The PAS does not indicate that the Department received additional medical information from Claimant's physician. The Department sent a Notice of Termination/Denial to Claimant on December 9, 2011. (Exhibit D-4.)
- 5) Claimant asserted that he should have received four (4) additional deficits on the November 21 PAS, in the areas of vacating a building during an emergency, eating, bathing and administering medication.
- 6) ***Vacating a building during an emergency:*** The WVMi nurse rated Claimant as "Independently," for this area and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] states he believes he can get out in the event of an

emergency. He walks in the home today with a steady and straight gait, reg[ularly] paced. He denies use of walker or cane.” Claimant’s mother testified that during the day, he could vacate his home during an emergency, but at night, once he takes his evening medications, he sleeps so soundly that he would not be able to get out of his home without hands-on assistance. She added that if he wakes up at night, he is disoriented, and it takes him a few minutes to become fully aware of his surroundings. Department’s witness testified that during the PAS, Claimant told her he believed he could vacate his home during an emergency. However, she added, after reviewing his list of medications, she agreed that he would need assistance if he had to vacate his home during the night.

- 7) ***Eating:*** The WVMi nurse rated Claimant at Level 1, “Self/Prompting,” for this functional ability and wrote in the “Nurse’s overall comments” section, “[Claimant] feeds himself using utensils. He denies having to have meat or any other food cut up for him.” Claimant testified he could not cook his own food because he sometimes forgets to turn off the stove. Department’s witness replied that according to policy, meal preparation cannot be considered as part of the functional ability of eating. She added that in order to assess him with a deficit for this ability, he would require assistance with eating, such as someone to cut up his meats or firm vegetables for him.
- 8) ***Bathing:*** The WVMi nurse rated Claimant at Level 1, “Self/Prompting,” for this functional ability and wrote in the “Nurse’s overall comments” section, “[Claimant] uses a reg[ular] tub with a shower. He does not have a shower chair. He gets in and out of the shower without assistance. He says he ‘doesn’t need any help’ washing. He washes all areas himself . . .” Claimant testified that his father helps him with bathing because he cannot bend over to wash his lower legs. His mother testified that she places a shower chair in the bathtub for him. She added that he washes himself completely, but she and his father remain close to him because of the danger of falls. Department’s witness testified that in order for her to assess Claimant with a deficit for bathing, he would require hands-on assistance in order to bathe. She added that someone would have to put their hands on him and assist him by washing at least some parts of his body for him.
- 9) ***Administering medications:*** The WVMi nurse rated Claimant as, “With prompting and supervision,” in this area and wrote in the “Nurse’s overall comments” section, “[Claimant] says he takes the lids off his medication bottles and takes his meds himself. His mother states she sometimes thinks he forgets and she asks him if he took them, just to be sure.” Claimant testified that due to his memory problems, he often forgets to call his pharmacy when he needs a medication refill. His mother added that he takes his medications by himself, but she sometimes has to remind him to do so. Department’s witness testified that in order to be assessed with a deficit for administering medications, Claimant would require another person to give him the medication, to place it into his mouth or to administer it through an injection.

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/Disabled Waiver Program. On his PAS that was performed on November 21, 2011, Claimant obtained one (1) deficit, for dressing.
- 2) The Department was incorrect in its decision not to assess a deficit in the area of vacating a building during an emergency. Department's witness testified that after reviewing Claimant's list of medications, she believed that he would not be able to vacate his home without assistance during a night-time emergency.
- 3) The Department was correct in its decision not to assess a deficit in the area of eating. Claimant testified that he could not prepare his meals for himself; however, meal preparation is not considered an aspect of this functional ability.
- 4) The Department was correct in its decision not to assess a deficit in the area of bathing. Claimant and his witness testified that Claimant's parents supervise his bathing due to the danger of falling, but this does not constitute hands-on physical assistance.
- 5) The Department was correct in its decision not to assess a deficit in the area of administering medications. Claimant testified that he could not remember to keep his prescriptions filled, while his mother testified that he could take his medications by himself with occasional prompting on her part. Policy requires that someone must actually administer medications by placing a pill in a person's mouth or by giving an injection in order to receive a deficit in this area.
- 6) Claimant provided testimony to support a finding that an additional deficit should have been assessed on the November 2011 PAS, in the area of vacating a home in the event of an emergency. 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 29th Day of March, 2012.

Stephen M. Baisden
State Hearing Officer