



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 30, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 13, 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-410

**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 13,
2012, on a timely appeal filed January 5, 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 Sister and Representative

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
-----, 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 29, 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 29, 2011.
- D-3 Pre-Admission Screening (PAS) assessment conducted on November 17, 2010.
- D-4 Potential denial letter from APS Healthcare, dated December 6, 2011.
- D-5 Denial letter from APS Healthcare, dated December 22, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of her continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in her home on November 29, 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 her/her own medications.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on November 29, 2011 in the Claimant's home. She stated that the Claimant, Claimant's brother and two of her sons were in the home when she arrived, but they left the room when she began the assessment. She stated that the Claimant and she were the only persons who took part in the PAS. She added that she assessed Claimant with two (2) deficits on the PAS, for dressing and continence, and therefore she did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department issued a Notice of Potential Denial dated December 6, 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 indicates that the Department received additional medical information from Claimant's physician, -----, D.O., on December 21, 2012. The medical information consisted of diagnoses of the medical conditions of aphasia and significant arthritis. The Department sent a Notice of Termination/Denial to Claimant on December 22, 2011. (Exhibit D-5.)

- 5) Claimant's representative asserted that Claimant should have received four (4) additional deficits, on item #26 of the PAS, for the functional abilities of bathing, grooming and walking, and on #28, administering medications.
- 6) ***Bathing:*** The WVMi nurse rated Claimant at Level 1, "Self/Prompting," for this functional ability and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] states she takes both baths and showers . . . I asked her if anyone has to assist her and she denies. She stated she 'holds on good' getting in and out [of the bathtub.] She denies use of shower chair and states there is a railing in shower and when she reaches around to wash her back she holds on with one hand . . ." Claimant's representative stated that she purchased a shower chair for Claimant in order to facilitate showering. She stated that she and her daughter make themselves available to help her bathe, but most of the time, Claimant wants her privacy.
- 7) ***Grooming:*** The WVMi nurse rated Claimant at Level 1, "Self/Prompting," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] states she washes her own hair while in the shower. She states she can comb/pick out her own hair. She states she shaves her own legs and underarms and applies her own deodorant. She applies her own lotion as well . . . She has dentures on the bottom and own teeth on the top and takes care of her own teeth." Claimant's representative stated that Claimant can attend to her personal hygiene, and she can brush her hair and her teeth. She stated that sometimes she and her daughter have to help her, but Claimant does not want help. She added that Claimant thinks she still can take care of herself without assistance.
- 8) ***Walking:*** The WVMi nurse rated Claimant at Level 1, "Independently," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] walks independently. No use of cane, walker or holding onto furniture/objects to assist herself as she walks inside the home. She demonstrated her ability several times during the assessment and walked without any difficulty." Claimant's representative stated that she has to walk with Claimant at all times. She stated that she has to walk with Claimant because Claimant's knees and legs are not steady. She added that most of the time if she is walking, someone is with her, but sometimes she 'sneaks off' and goes walking by herself.
- 9) ***Administering Medications:*** The WVMi nurse rated Claimant at Level 1, "With Prompting/Supervision," in this area and wrote in the "Nurse's overall comments" section, "[Claimant] states she takes meds daily out of [prescription] bottles and can place into her own mouth. She took one of her pills as I was typing . . . She states she is pretty good about remembering to take meds but states she will occasionally forget and need family to remind her." Claimant's representative stated that Claimant can take her own medications sometimes, but most of the time her caregiver helps her take her medications.
- 10) Claimant's representative stated that on the day of the assessment, Claimant was having "a good day" and was functioning well. She added that on most days, she

does not have “a good day” and it is much more difficult for her to perform her activities of daily living to the level that she performed on the day the PAS was conducted. Department’s witness pointed out that on the “Nurse’s overall comments” section of the PAS, she asked the Claimant if she was having a good day, a bad day or an average day. The “comments” section of the PAS states as follows, “She tells me when I asked her that her ability today is an average day for her.”

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 her PAS that was performed on November 29, 2011, Claimant obtained two (2) deficits.
- 2) The Department was correct in its decision not to assess a deficit in the area of bathing. Claimant’s representative testified that Claimant can bathe herself with the assistance of a shower chair, while she and her daughter remain available if needed. In order to receive a deficit for this functional ability, at least one person would have to help Claimant bathe at all times.
- 3) The Department was correct in its decision not to assess a deficit in the area of grooming. Claimant’s representative testified that Claimant can take care of her hygiene needs and brush her teeth and her hair, but she needs occasional help. In order to receive a deficit for this ability, someone would have to help her at all times with her grooming.
- 4) The Department was correct in its decision not to assess a deficit in the area of walking. Department’s witness testified and recorded on the PAS that she observed Claimant walking without assistance in her home.
- 5) The Department was correct in its decision not to assess a deficit in the area of administering medication. Department’s witness testified and recorded on the PAS that Claimant told her she could administer her own medications, and she took one of her medications while the witness was conducting the assessment.
- 6) Claimant provided no testimony or evidence to support a finding that additional deficits should have been awarded on the November 2011 PAS. Therefore, 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 30th Day of March, 2012.

**Stephen M. Baisden
State Hearing Officer**