



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

April 5, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 4, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate 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 of the program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to terminate 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
Central West Virginia Aging Services

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

IN RE: ---- ----,

Claimant,

v.

ACTION NO.: 12-BOR-548

**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 January 20, 2012.

It shall be noted that the Claimant benefits and services under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

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

 Case Manager-Central West Virginia Aging Services

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Lee Ann Beihl, 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 is correct in its proposal to terminate the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening Assessment dated December 22, 2011
- D-3 Notice of Potential Denial dated December 29, 2011
- D-4 Notice of Decision dated January 13, 2012
- D-5 Pre-Admission Screening Assessment dated January 6, 2011

VII. FINDINGS OF FACT:

- 1) On December 22, 2011, Ms. Lee Ann Beihl, RN-West Virginia Medical Institute (WVMI) medically assessed the Claimant to determine her continued eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) During the assessment, Ms. Sickles identified the Claimant's functional deficits as vacating a building, bathing, grooming, and dressing.
- 3) On December 29, 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 4 areas-vacating a building, bathing, grooming and dressing.

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 January 13, 2012, the Claimant was issued Exhibit D-4, Notice of Decision, 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 4 areas-vacating a building, bathing, grooming and dressing.

- 5) The Claimant contends that she remains medically eligible for Aged and Disabled Waiver Services and additional deficits should have been awarded in the areas of continence, transferring and walking.

The following addresses the contested areas:

Incontinence Ms. Beihl assessed the Claimant as continent of the bladder and bowel and documented her findings in the assessment as, “[Claimant] states she is continent of bowel and bladder.” The Claimant stated “I do have problems with incontinence of the bladder and at times, wear a pad to be safe.” The Claimant indicated that her pad sometimes leaks and she must change the pad “a couple times a day.” The Claimant remembered informing the assessing nurse of the information related in the assessment and revealed that her problems regarding the incontinence have affected her in the last couple of weeks prior to the hearing.

Policy requires that a deficit is awarded in the area of incontinence when the individual is assessed at a Level 3 or higher, meaning that the individual experiences three or more weekly accidents or is incontinent. The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant based on information known at the time of the

assessment. Testimony indicated that the Claimant reported no difficulties in the area of incontinence at the time of the assessment and has recently experienced problems in this functional area. At the time of the assessment the Claimant was reported to be continent of both bowel and bladder; therefore, an additional deficit in the contested area cannot be awarded.

Transferring/Walking Ms. Beihl assessed the Claimant as Level 2 Supervised Assistive Device in the areas of transferring and walking. Ms. Beihl documented her findings of the Claimant's ability to transfer in the assessment as "demonstrated transfer with furniture assist, poor balance, unsteady gait, increased pain noted." The Claimant's walking ability was documented in the assessment as "demonstrated walking with furniture assist, poor balance, unsteady gait, increased pain noted." The Claimant testified that she is in need of surgery on her left hip and occasionally requires a walker to assist in her ambulation. The Claimant indicated that she cannot get in and out of the bathtub due to her hip problems. Kay Ikerd, RN-Bureau of Senior Services indicated that the Claimant's difficulties in the area of transferring in and out of the bathtub were reflective of her bathing ability and the Claimant was awarded a deficit in that functional area.

Policy requires that a deficit is awarded in the area of transferring and walking when the individual is assessed at a Level 3 or higher meaning that the individual requires one or two person assistance to transfer or walk in the home. Testimony did not reveal that the Claimant required hands on physical assistance to aide in her ability to transfer or ambulate. 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 501.5 (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 nursing home level of care.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1– 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 vacating a building, bathing, grooming and dressing.

- 3) Testimony and evidence presented during the hearing did not reveal any additional deficits.
- 4) The Claimant's total number of deficits awarded is four; therefore, the Department was correct in its decision to terminate the Claimant's Aged and Disabled Waiver benefits

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate 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 April, 2012.

Eric L. Phillips
State Hearing Officer