



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

May 18, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 1, 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 no longer 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
-----, RN, A Special Touch for Seniors

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

IN RE: -----,

Claimant,

v.

ACTION NO: 12-BOR-631

**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 ----- concluded on May 18, 2012. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This Fair Hearing was conducted by telephone conference call on May 1, 2012, on a timely appeal filed February 8, 2012. This hearing was originally scheduled for April 5, 2012, but was rescheduled at Claimant's and Department'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
-----, RN, A Special Touch for Seniors, Claimant's Representative
-----, RN, Special Touch Nursing, Claimant's Witness
-----, Special Touch Nursing, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Angie Hill, 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 who gave testimony under oath.

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 January 19, 2012.

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 January 19, 2012
- D-3 Potential denial letter from APS Healthcare, dated January 20, 2012
- D-4 Denial letter from APS Healthcare, dated February 6, 2012
- D-5 Pre-Admission Screening (PAS) assessment conducted on October 13, 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 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 January 19, 2012. (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 January 19, 2012, in the Claimant's home. She stated that the Claimant and she were the only persons who took part in the PAS. She added that she assessed Claimant with three (3) deficits on the PAS, for vacating a building during an emergency, bathing and dressing, and therefore Claimant did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department issued a Notice of Potential Denial dated January 20, 2012. (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. 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 three (3) additional deficits on item #26 of the PAS, for the functional abilities of eating, grooming and incontinence.
- 6) **Eating:** 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] reports she can feed herself and cut up all foods/meats without assist. [Claimant] has good hand strength with grips at this time." Claimant testified that she can feed herself but she cannot cut up her meats because she has arthritis in one hand. Department's witness testified that Claimant told her during the PAS she could feed herself. Department's witness added that Claimant demonstrated good hand strength in both of her hands, so she did not have a reason to question Claimant's statement that she could cut up her food.
- 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] reports she . . . goes to the beauty shop to have her hair washed and set every two weeks. [Claimant] denies she washes her hair in the home. [Claimant] reports she can do fingernail care and states her family doctor clips her toenails for her when she is there for an appointment. [Claimant] states she has no teeth or dentures and states she rinses her mouth without assistance." Department's witness testified that because Claimant had her hair washed and her toenails cut outside the home, she cannot be assessed with a deficit for grooming because deficits are assessed where care is needed inside the home. Claimant's witness, her homemaker, stated that she washes and curls Claimant's hair because Claimant can no longer afford to go outside the home to have her hair washed. She stated she has done this for "the last couple of months," but at the time of the PAS, Claimant was still going out to the beauty shop for her hair care needs.
- 8) **Incontinence:** The WVMi nurse rated Claimant at Level 1, "Continent," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] denies having bladder accidents at any time." Claimant's representative stated that Claimant underestimated the number of episodes of urinary incontinence she has. She stated that Claimant's case management agency, A Special Touch for Seniors, automatically ships her incontinence supplies weekly. Claimant testified she has "five or six" urinary accidents every day. Claimant's witness, her homemaker, testified that she empties the garbage several times per day from Claimant's bathroom, and every time she empties it, she finds wet incontinence pads in it. Claimant's representative pointed out that Claimant's list of medications includes Lasix, 20 milligrams per day. She stated that increases in urination frequency and urgency are side effects of this medication. She added that Claimant was not forthright about her bladder incontinence problems because this was an embarrassing issue for her. Department's witness testified that she understood this can be an embarrassing subject for some people, but Claimant told her during the PAS that she did not have urinary accidents, and this was consistent with the previous PAS done in October 2010. (Exhibit D-5.) She stated that Claimant did not

inform her that she was using incontinence supplies. She added that for these reasons, she had no reason to believe that Claimant was incontinent of bladder.

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 January 19, 2012, Claimant was assessed with three (3) deficits.
- 2) The Department was correct in its decision not to assess a deficit in the area of eating. The WVMi nurse testified and recorded on the PAS that Claimant did not report having any difficulty cutting her food, including meats, and that Claimant's hand strength was good.
- 3) The Department was correct in its decision not to assess a deficit in the area of grooming. The WVMi nurse testified and recorded on the PAS that at the time of the PAS, Claimant was having her hair and nail care needs met outside of the home, while the PAS only assesses areas where help is needed inside the home.
- 4) The Department was correct in its decision not to assess a deficit in the area of incontinence. The WVMi nurse recorded on the PAS that Claimant reported no bladder incontinence. She testified that this information was consistent with Claimant's previous PAS, and that Claimant did not report the use of incontinence supplies.
- 5) Neither Claimant, her representative nor her witnesses provided testimony or evidence to support a finding that additional deficits should have been awarded on the January 2012 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 18th Day of May, 2012.

**Stephen M. Baisden
State Hearing Officer**