



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

Joe Manchin III
Governor

Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

September 23, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 17, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Aged/Disabled Waiver services.

In arriving at a decision, the State Hearings 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/Disabled Waiver program is based on current policy and regulations. These regulations provide that an individual must 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 Home and Community Based Waiver Services Manual § 501).

The information submitted at your hearing revealed that you no longer meet the medical criteria required for the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to terminate your Aged/Disabled Waiver services.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Bureau of Senior Services
West Virginia Medical Institute
Central WV Aging Services

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

-----,

Claimant,

v.

Action Number: 09-BOR-1556

**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 concluded on September 17, 2009 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 September 17, 2009 on a timely appeal, filed July 20, 2009.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have been continued pending a decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & Human Resources.

The ADW Program 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

-----, Witness for Claimant

Brian Holstein, LSW, Bureau of Senior Services
Teena Testa, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to terminate Claimant's services under the ADW program is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual §501.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual §501.3
- D-2 Pre-Admission Screening Form dated June 16, 2009

Claimants' Exhibits:

- C-1 Diagnoses from Dr. [REDACTED] dated August 18, 2009

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on June 16, 2009. A Pre-Admission Screening form (PAS) was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI). Claimant was awarded deficits in vacating in an emergency, bathing, dressing and grooming (D-2).

One (1) additional deficit was required for Claimant to continue receiving ADW services.

- 2) Claimant contested not receiving deficits in the areas of incontinence, walking and eating. Claimant stated she was embarrassed to discuss her incontinence problems with the nurse at the assessment. Claimant stated she has bowel and bladder incontinence. She uses incontinent supplies and was recently prescribed medication for the bladder incontinence. She has been incontinent 2-3 times a week for over a year.
- 3) Claimant testified that she has difficulty walking. Her medications cause her feet to swell and on those days she uses a cane or walker for assistance. When her son visits, he helps her.
- 4) Claimant stated she chokes when she eats. Her homemaker prepares meals and brings them to her. She is able to cut her own food.

- 5) Teena Testa, RN with WVMI testified to the PAS she completed in June 2009. Ms. Testa stated Claimant admitted to having bladder accidents but only when she sneezed or coughed and that this occurred every other week. Claimant told Ms. Testa of having bowel accidents of which the last was a month prior to the assessment.

Ms. Testa stated Claimant was walking independently the day of the assessment but used the door frames to steady herself. Claimant's son was there that day and did not provide any assistance to Claimant with walking.

- 6) Aged/Disabled Waiver Policy Manual § 501.3.2 states:

Medical Criteria

An individual must have five (5) deficits on the 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

- (a) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
- (b) Bathing - Level 2 or higher (physical assistance or more)
- (c) Dressing - Level 2 or higher (physical assistance or more)
- (d) Grooming - Level 2 or higher (physical assistance or more)
- (e) Bowel Continence - Level 3 or higher; must be incontinent
- (f) Bladder Continence – Level 3 or higher; must be incontinent
- (g) Orientation - Level 3 or higher (totally disoriented, comatose)
- (h) Transfer - Level 3 or higher (one-person or two-person assistance in the home)
- (i) Walking - Level 3 or higher (one-person assistance in the home)
- (j) 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 own medications

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. Claimant was awarded four (4) deficits on her June 2009 medical evaluation.
- 2) Claimant is able to cut her own food and feed herself. Meal preparation is not considered a deficit. Claimant walks with the aid of a walker or cane. Hands on physical assistance is required for a person to receive a deficit in walking. No additional points can be awarded in the areas of eating and walking.
- 3) Testimony from Claimant indicated she had been incontinent on a weekly basis for at least a year. However, credible testimony from the assessing nurse revealed that at the time of the assessment, Claimant stated her incontinence was only 1-2 times a month. Any deterioration in Claimant's condition since the assessment cannot be considered.
- 4) Claimant no longer meets the medical criteria to remain eligible for the ADW program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate Claimant's Aged/Disabled Waiver services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd day of September 2009.

**Kristi Logan
State Hearing Officer**