



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 4, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 26, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for the Aged/Disabled Waiver program.

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. Some of these regulations state 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 § 501.3).

The information submitted at your hearing revealed that you do not meet the medical criteria as set forth in policy to receive services under the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to deny your application for the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 09-BOR-2574

**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 May 26, 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 May 26, 2009 on a timely appeal, filed December 8, 2008.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver (ADW) is set up cooperatively between the Federal and State governments and 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

-----, Claimant's Ex-Husband

Kay Ikerd, RN, Bureau of Senior Services
Angie Hill, RN, West Virginia Medical Institute

All participants testified by phone.

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

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether or not the Department's decision to deny Claimant services under the ADW program was correct.

V. APPLICABLE POLICY:

Aged/Disabled Waiver Policy Manual §501.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Policy Manual §501.3
- D-2 Pre-Admission Screening Form dated October 24, 2008
- D-3 Potential Denial Letter dated October 27, 2008
- D-4 Denial Letter dated November 11, 2008

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated medically for the ADW program on October 24, 2008. Angie Hill, RN with the West Virginia Medical Institute (WVMI) completed a Pre-Admission Screening (PAS) form that date (D-2).

Claimant was awarded deficits in vacating in an emergency, dressing and continence (D-2). Two (2) additional deficits were required for Claimant to be eligible for ADW services.

- 2) Claimant testified that everything has changed since the assessment. She fell in December 2008 and broke her hip and leg which will require surgery. She now has to use a wheelchair.

Claimant's ex-husband, -----, and his daughter -----, assist her with her daily activities. ----- helps her bathe and washes her hair. She has been doing this for Claimant since November 2008. ----- also cooks and cleans for her.

----- assists Claimant with her medications. She forgets to take her medicine and gets confused on what to take. ----- gets her pills ready and hands them to her. Claimant stated she is able to take them on her own. ----- or ----- administers her insulin shots to her. They have been helping with her medications for at least a year.

- 3) 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/her 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 three (3) deficits on her October 2008 medical evaluation.
- 2) The PAS evaluates an individual's current medical condition. Claimant had a change in her medical condition subsequent to the date of the assessment. Deficits in wheeling, bathing and grooming cannot be awarded as Claimant testified she required assistance in those areas in November 2008.

- 3) Claimant testified that she receives assistance with her insulin shots and reminders to take her medications. Homemakers are not permitted to administer shots and will not be considered in the determination of homemaker services. Claimant testified she is able to take her pills herself. A reminder to take medication is considered prompting/supervision and not a deficit. A deficit in this area cannot be awarded.
- 4) Claimant does not meet the medical criteria required to be eligible for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant services under the Aged/Disabled Waiver program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of June, 2009.

**Kristi Logan
State Hearing Officer**