



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

Joe Manchin, III
Governor

Martha Yeager Walker
Secretary

May 1, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 29, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your services through 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. 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 § 501.3)

The information which was submitted at your hearing revealed that you no longer meet the medical criteria required to remain eligible for services under the Aged/Disabled Waiver program.

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

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
[REDACTED] Services

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

-----,

Claimant,

v.

Action Number: 09-BOR-821

**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 April 29, 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 April 29, 2009 on a timely appeal, filed February 26, 2009.

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

II. PROGRAM PURPOSE:

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

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

-----, Claimant
-----, Claimant's Mother and Homemaker

Kay Ikerd, RN, Bureau of Senior Services
Karen Keaton, 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 Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department's decision to terminate Claimant's services under the Aged/Disabled Waiver program is 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 January 26, 2009
- D-3 Notification Letter dated February 11, 2009
- D-4 Correspondence from Drs. ---- and ----- dated February 10, 2009
- D-5 Notification Letter dated April 16, 2009

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the Aged/Disabled Waiver (ADW) program on January 26, 2009. A Pre-Admission Screening (PAS) form was completed that date by Karen Keaton, RN, of the West Virginia Medical Institute (WVMI).

Claimant was awarded a deficit in eating. Additional medical information was submitted subsequent to the PAS resulting in an additional deficit in vacating in an emergency (D-2 and D-4). Claimant required three (3) additional deficits to continue receiving services under the ADW program.

- 2) Claimant contested not receiving deficits in the areas of bathing, incontinence, orientation and medication administration. Claimant's mother and homemaker, -----, testified that she assists Claimant with bathing. He does not have use of the right side of his body causing him to be unbalanced. Claimant falls frequently and she must be present when he bathes for fear of him falling in the shower and getting hurt. ----- stated Claimant uses a shower chair for bathing. She physically assists him in bathing by washing his hair and ears.

- 3) ----- stated Claimant is often disoriented. He will be perfectly fine and then not remember the events from thirty (30) minutes earlier. He has been known to wander off when upset.

Also, because of the disorientation, ----- must assist Claimant with his medication administration. ----- stated that Claimant does not know what medication to take so she must give him each and every dose. Recently, she has started crushing his medication up and mixing it in applesauce to prevent him from choking.

- 4) ----- stated Claimant is now incontinent of the bladder. She does his laundry for him and has noticed his clothes and bed sheets were wet. ----- said the bladder accidents started after the assessment in January 2009.
- 5) ----- testified that Claimant is embarrassed by his condition and his inability to fully take care of himself at such a young age. He may have downplayed his abilities to the nurse during the assessment.
- 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/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 two (2) deficits on his January 2009 medical evaluation.
- 2) Claimant was rated as being intermittently disoriented on the PAS. A deficit for orientation would require Claimant to be totally disoriented. Testimony revealed Claimant to have only periods of disorientation. No additional deficit can be awarded in this area.
- 3) Claimant was rated as needing prompting/supervision with medication administration. At the time of the assessment, Claimant's mother handed Claimant his medication and watched him take it. Since the assessment, she has had to start crushing his pills to prevent choking. Claimant was correctly rated on the PAS during that time period and no additional deficit can be awarded in this area.
- 4) Claimant was continent at the time of the assessment. Any deterioration since that time cannot be considered in this decision. A deficit in this area cannot be given.
- 5) Credible testimony from Claimant's mother revealed that she physically assists Claimant with bathing. A deficit for bathing shall be awarded.
- 6) However, despite the addition of a deficit for bathing, Claimant does not meet the medical criteria required to remain 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 terminate Claimant's 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 1st day of May 2009.

**Kristi Logan
State Hearing Officer**