



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D. Ph.D
Cabinet Secretary

January 4, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 28, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny you services under 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).

The information submitted at your hearing revealed that you have a deficit in medication administration and therefore meet the medical criteria for the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **Reverse** the action of the Department to deny you services under the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: 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: 10-BOR-1908

**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 October 28, 2010 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.

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:

-----, Medical Attorney in Fact for Claimant

Kay Ikerd, RN, Bureau of Senior Services
Teresa McCallister, 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 home.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department correctly denied Claimant Aged/Disabled Waiver services.

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 July 29, 2010
- D-3 Potential Denial Letter dated August 6, 2010
- D-4 Medical Records and Progress Notes
- D-5 Denial Letter dated September 2, 2010

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the Aged/Disabled Waiver (ADW) program on July 29, 2010. A Pre-Admission Screening (PAS) form was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of vacating in an emergency, bathing, dressing and grooming (D-2). One (1) additional deficit was required for Claimant to be eligible for ADW services.

- 2) -----, Claimant's daughter and Medical Attorney in Fact, stated she was contesting her mother not receiving a deficit in walking. ----- testified that her mother has back pain and weakness in her left leg. ----- stated Claimant uses a cane or walker in home or will hold onto the walls for stability. According to -----, Claimant has frequent falls due to the weakness in her leg. Claimant's husband is unable to assist Claimant in the home due to his own medical conditions.

----- stated her mother's condition is deteriorating and she requires hands on assistance with walking. ----- stated her mother's mental condition is also progressively worsening. ----- stated Claimant will not take her medication for Alzheimer's so she has

resorted to using an Exelon patch instead of a pill. -----testified her mother also uses a Lidoderm patch for back pain (D-2). -----stated she has to place the Lidoderm patch on her mother as she cannot reach around to her back to put it on. ----- then uses that opportunity to place the Exelon patch on her mother.

3) Teresa McCallister, RN with WVMI testified to the PAS she completed for Claimant. Ms. McCallister stated she did not witness anyone assisting Claimant with walking in the home. Ms. McCallister stated Claimant used her cane and the furniture to walk around the home. Ms. McCallister stated she evaluated Claimant as a Level 2 in walking, requiring an assistive device.

4) 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 July 2010 medical evaluation.
- 2) Claimant was correctly evaluated as a Level 2 in walking due to her use of an assistive device. Claimant's need of physical assistance with walking was not made known to the nurse at the time of the assessment. A deficit in walking cannot be awarded in this area.
- 3) According to the testimony given by Claimant's daughter, Claimant is unable to administer her own medications in patch form as she cannot reach her back area. The physical assistance given to Claimant in administering her Lidoderm patch qualifies as a deficit in medication administration.
- 4) Claimant will be awarded a deficit in medication administration. With the addition of this deficit, Claimant meets the medical criteria to be eligible for Aged/Disabled Waiver services.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 January 2011

**Kristi Logan
State Hearing Officer
Member, Board of Review**