



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

June 13, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 21, 2011. 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 services 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 grooming and continue to meet the medical eligibility for Aged/Disabled Waiver services.

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

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

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

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-629**

**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 21, 2011 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 a timely appeal, filed February 2, 2011.

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

**II. PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and 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  
-----, Case Manager, [REDACTED] Services  
-----, Homemaker, [REDACTED] Services  
-----, Witness for Claimant  
-----, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)  
Teena Testa, RN, West Virginia Medical Institute (testified by phone)

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

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's proposal to terminate Claimant's Aged/Disabled Wavier services 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 January 3, 2011 and Medical Necessity Form dated October 5, 2010
- D-3 Potential Denial Letter dated January 4, 2011
- D-4 Termination Letter dated January 27, 2011

**Claimants' Exhibits:**

- C-1 Correspondence from [REDACTED] MD; ----- and -----

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on January 3, 2011. 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 the areas of vacating in an emergency, bathing, dressing and transferring (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 walking, wheeling and grooming. Claimant testified that she has prosthetics on both legs below the knee. She stated she is very unstable using her walker and needs someone close by to ensure that she does not fall.

Claimant stated she needs assistance with her wheelchair in the home. Claimant stated her cohabiter, ----- and friend -----, who both reside with her, help her maneuver her wheelchair.

Claimant testified that she has neuropathy and has difficulty with her hands. Claimant stated she has trouble opening and closing her hands and often drops things in her grasp. Claimant stated ----- assists her in brushing her hair and cuts tangles out of her hair. Claimant stated she has long hair and some days cannot manage to brush it herself. She stated she has pain in her hands and their condition will only worsen and never improve. Claimant noted she experiences good and bad days, and the day of the assessment was a good day.

- 3) -----, Claimant's homemaker, testified that she encourages Claimant to be independent with her daily living activities and assists only when necessary. ----- stated she assists Claimant in brushing her hair as she cannot brush it herself some days due to her hands. ----- stated Claimant is unbalanced on her walker.
- 4) -----, Claimant's cohabiter, testified that Claimant's prosthetics will come off and Claimant falls. -----stated Claimant cannot get up by herself and can never be left alone. -----stated he helps Claimant get the tangles out of her hair.
- 5) Teena Testa, RN with WVMI testified to the PAS she completed on Claimant. Ms. Testa documented in the PAS that -----cuts the tangles out of Claimant's hair but when questioned as to whether or not she could brush and wash her hair, Claimant advised her that she could. Ms. Testa stated during the assessment Claimant's hand grips were tested and found to be equally strong. Claimant was able to sign the consent forms and told her that she could cut up her own foods. Ms. Testa stated that since Claimant denied needing assistance in grooming her hair, she did not award a deficit in that area.

Ms. Testa stated during the assessment she witnessed Claimant walk with the aid of her walker and appeared to steady on her feet with no physical assistance. Ms. Testa stated because Claimant did not receive a deficit in walking, a deficit for wheeling could not be awarded as well.

- 6) A letter from Claimant's physician, [REDACTED] MD dated February 7, 2011 was presented and reads in pertinent part (C-1):

This patient is seen periodically for multiple medical problems. She has significant loss of use of both hands due to muscle atrophy and neuropathy.

- 7) The Medical Necessity Evaluation Request Form dated October 15, 2010 also completed by Dr. Day reads in pertinent part (D-2):

Patient's Diagnosis(es): Advanced Diabetes Mellitus with severe Peripheral Vascular Disease and Neuropathy

- 8) 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 January 2011 medical evaluation.
- 2) Claimant testified that she does not require physical assistance in walking, only that someone “needs to be close by” in case she falls. Claimant cannot receive a deficit in walking without hands on, physical assistance. Policy does not allow a deficit in wheeling if a deficit in walking was not awarded.
- 3) Claimant advised the WVMi nurse that her cohabiter assisted her in cutting the tangles out of her hair during the assessment. Although Claimant confirmed to the nurse that she could wash and brush her own hair, it is reasonable to believe that with a diagnosis of neuropathy, Claimant would require occasional assistance in this area. With Claimant’s disclosure of needing the tangles cut from her hair, it appears that the area of

grooming was not fully explored by the WVMI nurse in light of Claimant's diagnosis of neuropathy. Claimant will be awarded a deficit in grooming.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate Claimant's Aged/Disabled Waiver services. A deficit in grooming will be awarded to Claimant.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13<sup>th</sup> day of June 2011.**

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**Kristi Logan**  
**State Hearing Officer**