



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

Rocco S. Fucillo
Cabinet Secretary

August 28, 2012

-----, Esquire
Legal Aid of West Virginia

RE: -----
Action No: 12-BOR-1571

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on -----' hearing held August 14, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate -----' services under the Aged/Disabled Waiver program

In arriving at a decision, the State Hearing 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 state that to be medically eligible for services, an individual must receive five deficits on the assessment tool known as the Pre-Admission Screening form (Aged/Disabled Home and Community Based Waiver Services Manual § 501.5.1).

The information submitted at your hearing revealed that your client no longer meets the medical criteria to continue receiving Aged/Disabled Waiver services.

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

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1571

**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 for ----- held on August 14, 2012. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed June 6, 2012.

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

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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:

-----, Esquire, -----, Counsel for Claimant
-----, Witness for Claimant
-----, Claimant's Homemaker

Pam Pushkin, RN, Bureau of Senior Services (testified by phone)
Teresa McCallister, 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 Waiver services is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual §501.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Pre-Admission Screening dated May 1, 2012
- D-2 Aged/Disabled Home and Community Based Waiver Policy Manual §501.5
- D-3 Potential Denial dated May 16, 2012
- D-4 Pre-Admission Screening dated May 24, 2011

Claimants' Exhibits:

- C-1 Correspondence from -----, DO dated May 30, 2012, and revised letter dated July 27, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on May 1, 2012. A Pre-Admission Screening (PAS) was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI)(D-1).

Claimant was awarded deficits in the areas of bathing, grooming, and continence. Two (2) additional deficits were required for Claimant to continue receiving ADW services (D-3).

- 2) Claimant's representatives contend Claimant should have received deficits in the areas of vacating in an emergency, dressing and medication administration.

Regarding the area of vacating, Claimant's daughter, -----, stated Claimant needs physical assistance getting in and out of her home. Claimant's homemaker, -----,

testified Claimant needs assistance getting in and out of the front door, and would be unable to vacate independently “if something happened”.

Teresa McCallister, RN with WVMI, testified she discussed vacating in an emergency with Claimant and her daughter and all were in agreement that Claimant could physically vacate the home with supervision. Ms. McCallister stated she observed Claimant walking with a steady gait and received no contradictory information to believe Claimant would be unable to vacate her home without physical assistance.

- 3) ----- testified Claimant can partially dress herself but requires assistance when experiencing shortness of breath. ----- stated Claimant will try to dress herself, but takes a while to do so and if they are running late for an appointment, ----- will assist her. ----- added that after a seizure, Claimant will be “out of it” and she will have to dress her mother. ----- testified Claimant can dress herself once in a while, but does not do a very good job.
- 4) ----- testified she ensures Claimant takes her medications as prescribed by reminding her when to take them. Claimant would not know what medications to take and when without her assistance. ----- stated she hands Claimant her medications, which she then places in her mouth. Claimant’s representatives argued that although Claimant has the ability to physically administer her own medications, she should have received a deficit for medication administration as she would not take her medications without her homemaker or daughter reminding her what to take.
- 5) Pertinent parts of the May 2012 PAS document (D-3):

Vacating: Discussed with member and dgtr [daughter] and determined that mem[ber] is able to vacate her home with supervision in case of experiencing occasional SOB [shortness of breath] or turning of ankle with walking, need for occasional transfer assist, or problem with close vision causing difficulty.

Dressing: Mem reports dressing herself and that she fatigues only occasionally; she denies SOB with this activity, or that she takes a long time to complete this activity. She and dgtr report mem dresses independently

Walking: Observed mem walk as desired with steady gait. She reports holding objects, or use of quad cane or rollator walker as needed; she reports ankle turns at times, making her unsteady at times

Medication Administration: Dgtr assists with set up when needed; reminds mem at times; mem places med in mouth

6/1/12: Received letter from Dr. ----- on 5/30/12 (C-1)...documentation is present in letter that patient is unable to evacuate her home without

assistance in case of emergency, and that patient is unable to administer her medication correctly without assistance; patient needs assistance with all ADL's, including meals, dressing, grooming, bathing...Information is being considered due to being received within 2 wks of Potential denial notification on 5/16/12. I do not have documentation of observations or information received during assessment which could support changes to Items #25, #26 or #28 based on ADW PAS criteria set by Medicaid Program Regulations.

6) Aged/Disabled Waiver Policy Manual § 501.5.1.1 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

7) Aged/Disabled Waiver Policy Manual § 501.12.1.2 states:

Personal Assistance/Homemaker staff cannot perform any service that is considered to be a professional skilled service or any service that is not on the member's Plan of Care or for members enrolled in Personal Options the Participant-Directed Service Plan. Functions/tasks that cannot be performed include, but are not limited to, the following:

G. Give injections, including insulin.

H. Administer any medications, prescribed or over-the-counter.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment tool in order to qualify medically for the Aged/Disabled Waiver program. Claimant received three (3) deficits on her May 2012 PAS.
- 2) Testimony and documentation contained in the PAS indicate Claimant has the physical ability to place her medications in her mouth, therefore she is able to administer her own medications. Claimant was assessed by the WVMI nurse as requiring prompting/supervision in medication administration. To be assessed as unable to administer her own medications, Claimant would require someone to physically place her medications in her mouth for her. Claimant was correctly assessed with prompting/supervision in this area, which does not constitute a deficit.
- 3) The PAS documents Claimant has the physical ability to vacate her home in the event of an emergency and further documents the WVMI nurse's observations of Claimant's ability to walk without the physical assistance of another individual with a steady gait. Based on the information provided to the WVMI nurse during the assessment, Claimant was correctly assessed as able to vacate with supervision.
- 4) Claimant and her daughter advised the WVMI nurse that Claimant could dress herself independently and denied shortness of breath or dressing slowly during the assessment. Testimony presented at the hearing contradicted the information provided the WVMI nurse, with no explanation as to why the nurse was given incorrect information during the assessment. Based on what was made known to the WVMI nurse in May 2012, Claimant was correctly assessed able to dress herself.
- 5) Claimant no longer meets the medical criteria required to continue receiving Aged/Disabled Waiver services.

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 28th day of August 2012

Kristi Logan
State Hearing Officer