



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

February 9, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 25, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny you Aged/Disabled Waiver services.

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 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 § 501.5).

The information submitted at your hearing revealed that you had urinary incontinence during the time of the medical evaluation and should have been awarded a deficit in that area.

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

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.: 11-BOR-2532

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 25, 2012 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 November 10, 2011.

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

Kay Ikerd, RN, Bureau of Senior Services
Teena Testa, 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 phone.

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 §501.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual §501.5
- D-2 Pre-Admission Screening dated September 22, 2011
- D-3 Potential Denial Letter dated September 28, 2011
- D-4 Notice of Decision dated October 17, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on September 22, 2011. A Pre-Admission Screening (PAS) was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI)(D-2).

Claimant was awarded deficits in the areas of vacating in an emergency, bathing, grooming, and dressing. One (1) additional deficit was required for Claimant to receive ADW services (D-4).

- 2) Claimant contested not receiving deficits in the areas of urinary incontinence and walking. Claimant stated she uses a walker if she is feeling weak and always uses a cane. Claimant stated it takes two (2) people to help her leave the home for errands. Claimant stated she has had knee replacements that have worsened her ability to walk independently.

Claimant testified that she wears overnight garment and pads all the time. Claimant stated she has urinary incontinence at least three (3) times a week, during the day and at night. Claimant stated she was changing her undergarments every two (2) hours in September 2011 and now changes them hourly. Claimant stated she has been incontinent for two (2) years.

Claimant stated she has an overactive bladder that causes the incontinence. Claimant stated when the WVMI nurse questioned her about the frequency of her "bladder accidents", she thought the nurse was referring to how many times out in public she had accidents on herself. Claimant stated she misunderstood the question regarding urinary incontinence.

- 3) Teena Testa, RN with WVMI testified to the PAS she completed for Claimant in September 2011. Ms. Testa stated Claimant did not receive a deficit in walking as she denied needing physical assistance to walk in her home. Ms. Testa stated Claimant was rated a Level 2 in walking, which is the use of an assistive device.

Ms. Testa stated Claimant advised her that she only had bladder incontinence less than three (3) times a week during the assessment. Claimant was rated a Level 2, for occasional urinary incontinence which does not qualify for a deficit.

- 4) 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

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 four (4) deficits on her September 2011 PAS.
- 2) Claimant does not require hands on physical assistance from another individual to walk in her home. Claimant was correctly assessed as a Level 2 in walking for her use of an assistive device in the home. No additional deficits can be awarded in this area.
- 3) Credible testimony from Claimant indicated she was having urinary incontinence in excess of three (3) times a week during the time of the medical evaluation in September 2011. Claimant has a diagnosis of an overactive bladder and uses undergarments. It is reasonable that Claimant misunderstood the WVMI nurse when exploring the area of incontinence. Claimant will be awarded a deficit for urinary incontinence.
- 4) Claimant meets the medical criteria for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny Claimant Aged/Disabled Waiver services. Claimant will be awarded one (1) additional deficit for urinary incontinence.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th day of February 2012

Kristi Logan
State Hearing Officer