



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

May 4, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 3, 2012. 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 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 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 you no longer meet the medical criteria required 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 your 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  
ResCare Home Care

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-850**

**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 ----- . 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 16, 2012.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued 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:**

-----, Claimant

-----, Case Manager, ResCare Home Care

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.

This hearing was held by videoconference.

**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 Aged/Disabled Home and Community Based Waiver Policy Manual §501.5
- D-2 Pre-Admission Screening dated January 19, 2012
- D-3 Potential Denial Letter dated January 24, 2012
- D-4 Notice of Decision dated February 8, 2012
- D-5 Pre-Admission Screening dated February 22, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on January 19, 2012. 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, eating, grooming, and dressing. One (1) additional deficit was required for Claimant to receive ADW services (D-4).

- 2) Claimant testified that she has a walk-in shower equipped with a tall shower chair. Claimant stated she will not shower unless someone is in the home with her in case she falls.

Claimant stated she uses a walker due to having poor balance. Claimant stated she has been using her walker more and more and will not leave the home without it.

Claimant testified she has no family support and relies on her homemaker to run errands for her and take her to doctors' appointments. She stated she is 81 years old and her conditions are not improving.

- 3) -----, Case Manager with ResCare Home Care, testified she has observed Claimant's unsteady gait and she requires the use of a walker. ----- stated Claimant requires someone in the home in case she falls.
- 4) Teena Testa, RN with WVMI, testified to the PAS she completed for Claimant in January 2012. Ms. Testa stated Claimant had received a deficit for bathing in the previous assessment, but denied needing any assistance with bathing this year. Ms. Testa stated Claimant's homemaker was present during the January 2012 assessment and the homemaker agreed that she did not assist Claimant with her bathing (D-2).
- 5) Pertinent parts of the February 22, 2011 PAS read (D-5):

Bathing: Client cannot reach her feet or mid back to wash. She tries to get into her walk in shower when the agency girl is here for an hour, but the hour goes by quickly. She can wash her face and arms.

- 6) Pertinent parts of the January 19, 2012 PAS read (D-2):

Bathing: Client states she takes a shower. Client notes she has a walk in shower. Client does have a shower chair she sits on. Client notes she does not need any help getting in and out of the shower. She notes she does not take a shower unless someone is here with her in the home. Client states she can wash her face, chest, arms and hands. She notes she does her feet pretty good and states she usually leaves the stopper in the shower and lets her feet soak while she is bathing. She notes she can wash her back herself. Client notes as far as bathing she does not need any help with her bathing. She notes she usually does pretty good with bathing. I ask [sic] if the homemaker has to help her with any of her bathing and she said she did not help her with bathing. Homemaker does agree with client.

- 7) 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 January 2012 PAS.
- 2) The documentation and testimony presented revealed Claimant does not require physical assistance with bathing. Supervision does not qualify as a deficit. Claimant has shown improvement in this area as she previously required physical assistance to get into and out of the shower. No deficit can be awarded in this area.
- 3) Claimant uses an assistive device to walk in the home. Claimant was correctly rated at a Level 2, supervision/assistive device, for walking. Hands-on physical assistance are required to receive a Level 3 in walking and to receive a deficit. A deficit cannot be awarded in this area.
- 4) Claimant no longer meets the medical criteria 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 4<sup>th</sup> day of May 2012**

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