



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 9, 2012

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 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 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-968

**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 March 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 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, ResCare Home Care

-----, Homemaker RN, 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 9, 2012
- D-3 Potential Denial Letter dated January 17, 2012
- D-4 Termination Letter dated March 14, 2012
- D-5 Pre-Admission Screening dated February 4, 2011

Claimants' Exhibits:

- C-1 Medical Records from ---- ----- Medical Center and Correspondence from -----, FNP-BC dated April 5, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on January 9, 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 grooming and medication administration. Three (3) additional deficits were required for Claimant to continue receiving ADW services (D-4).

- 2) Claimant testified that his health is worse this year than before and he was recently hospitalized. Claimant stated he needs help with dressing because he often staggers and

cannot button his shirts. Claimant stated he has frequent falls, passing out due to high blood pressure.

Claimant testified he needs assistance washing his back and uses a shower chair. Claimant stated he has bladder accidents 2-3 times daily and has to change his clothes. Claimant stated he only eats soft foods and his homemaker brings his meals to him while sitting in his chair.

Claimant stated he was not completely honest with the WVMI nurse during the assessment for fear of being placed in a nursing home. Claimant stated he is a private person and wants to be able to provide for himself.

3) Teena Testa, RN with WVMI, testified that Claimant received deficits in the areas of vacating in an emergency, bathing, dressing, bladder and bowel incontinence in 2011 that he did not receive on this year's assessment (D-2 and D-5). Ms. Testa stated Claimant's case manager and homemaker were present during the evaluation and did not contest her findings at that time.

4) Pertinent parts of the February 4, 2011 PAS read (D-5):

Vacating: Physically unable. Tethered to oxygen at all times. Unsteady gait.

Bathing: Has shower w/grab bar. Showers 2-3 x/wk. Sponges off alternate days. Needs help getting in/out of shower/tub. Unable to bend to feet.

Dressing: Dressed self this morning. Wearing button-up shirt, tee shirt, suspenders and trousers. States he has difficulty pulling pants up. Has to hold to something to keep from falling. Wears slip on shoes. Difficulty bending d/t SOB [due to shortness of breath].

Continence: Admits to wetting self daily. Sometimes changes clothes 1-2 x/day. Keeps urinal close by. Urinary frequency. Bowel – occ. Constipation, admits to soiling 3-4 x/wk.

5) Pertinent parts of the January 9, 2012 PAS read (D-2):

Vacating: In the event of an emergency client notes he could get out of the home by himself. Client notes he drives himself to the store. In an emergency client notes he could get out of every room in the home. I ask[ed] the client if it were dark and late at night if he could get out of the home and he said he could.

Bathing: Client stated he does take a shower. Client notes he has a shower chair but he does not use it right now. He states he does have

handles in the shower he holds onto. Client states the homemaker does not help him in and out of the shower. Client states he can wash his face, he can wash his whole body and he states he takes a medium towel and runs it over his back. Client notes he can wash his feet and his legs. I ask[ed] the client if the homemaker helps him with bathing and client states the homemaker does not help him with the bathing at all. He states he is a private person.

Dressing: Client notes he can put his shirts on himself. Client notes he does have problems with his buttons but he manages to get them done. Client states he does not need any help with getting his pants on. He notes he sits in his chair and puts his feet in his pants and stands up and pull[s] his pants up. Client states he does not need any help with getting his shoes and socks on. I ask[ed] the client if the homemaker helps him with getting any of his clothes on and he states the homemaker does not help him with his dressing. He can dress himself.

Continence Bowel/Bladder: Client notes he does have accidents on himself with his bladder, he notes he keeps him a jar close to his chair that he sits in. He notes he would pee on himself less than three times per week. I ask[ed] the client if he ever dribbled on himself and he notes he does dribble on himself maybe once a week. He notes his pants have straps and sometimes he gets tangled up in them. Client states his bowels move daily he denies any accidents with his bowels.

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

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 two (2) deficits on his January 2012 PAS in conjunction with his annual medical evaluation.
- 2) Claimant denied needing any type of assistance in vacating, bathing and dressing to the WVMI nurse. The WVMI nurse explored these areas in detail with Claimant during the medical evaluation and Claimant and his representatives agreed he was independent in these areas.
- 3) Claimant advised the WVMI nurse that his bladder accidents occurred less than three (3) times a week and “dribbling” occurred once a week. Claimant denied having bowel accidents. In order to qualify for a deficit in this area, incontinence must occur three (3) or more times a week.
- 4) The WVMI nurse correctly assessed Claimant based on the information that was made known to her at the time of the medical evaluation. 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 9th day of May 2012

**Kristi Logan
State Hearing Officer**