



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

June 14, 2010

RE: -----

Action No: 10-BOR-1108

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----hearing held May 18, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny ----- 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 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 ----- requires assistance to vacate her home in the event of an emergency.

It is the decision of the State Hearing Officer to **Reverse** the action of the Department to deny ----- application for 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 & HUMAN RESOURCES  
BOARD OF REVIEW**

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1108**

**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 May 18, 2010 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.

**II. PROGRAM PURPOSE:**

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & 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

-----, Paralegal, Legal Aid of West Virginia

-----, Witness for Claimant

-----, RN, [REDACTED]

-----, Homemaker, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)

Karen Keaton, 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 decision to deny Claimant Aged/Disabled Waiver services was 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 25, 2010
- D-3 Potential Denial Letter dated February 2, 2010
- D-4 Denial Letter dated February 18, 2010

**Claimants' Exhibits:**

- C-1 Photographs of Claimant's Home
- C-2 Diagram of Claimant's Home
- C-3 Medical Records from [REDACTED] Clinic and [REDACTED] Hospital

**VII. FINDINGS OF FACT:**

- 1) Claimant applied for Aged/Disabled Waiver services and a Pre-Admission Screening form (PAS) was completed on January 25, 2010 by Karen Keaton, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of eating, bathing, grooming and dressing (D-2). One (1) additional deficit was required for Claimant to be eligible for Aged/Disabled Waiver services.

- 2) ----, paralegal with Legal Aid of West Virginia, stated they were contesting Claimant not receiving deficits in the areas of incontinence, transferring and vacating. ----, RN with [REDACTED] testified to Claimant's incontinence. Claimant currently receives assistance through the Personal Care program and according to the Personal Care Daily Log that was developed in November 2009; Claimant's homemaker was responsible for laundry due to Claimant's bladder accidents two (2) times a week.

- 3) Claimant testified that Ms. Keaton entered her home through the back door on the day of the assessment in January 2010. Claimant stated the steps leading up to the back door have two (2) handrails. The steps leading up to the front door has only one (1) handrail (C-1). Claimant stated the handrail is on the left side, which is the side that is affected by hemiplegia. Claimant testified that she is unable to exit by the back door because there is no handrail on the right to assist her. Additionally, the front door swings outward.

Claimant stated her bedroom is located off the living room and the closest exit in case of an emergency would be the front door (C-2). Claimant stated she would need assistance in order to vacate by the front door.

Claimant stated she sleeps in a hospital bed with rails. Claimant stated she is able to get into bed and put the rails up herself but cannot lower them. Her daughter comes by in the mornings to lower the rails for her so that Claimant can get out of bed. Claimant stated she uses the raised rails to help her turn over in bed at night.

Claimant testified that she was not truthful to the assessing nurse regarding her bladder incontinence due to embarrassment. Claimant stated her fluid pill causes urine leakage and she wears undergarments.

- 4) -----, Claimant's daughter, testified that her mother takes a sleeping pill at night and is fearful that Claimant would be unable to wake up in the event of an emergency. ----- stated Claimant is unable to lower the bedrails due to her hemiplegia. -----stated she goes to her mother's house in the mornings to lower the bedrails for her. -----stated Claimant would be forced to remain in bed all day unless someone assisted her with the bedrails.

----- stated Claimant has bladder accidents 3-4 times a week, sometimes daily. She cleans Claimant up after these accidents because she is unable to do it herself.

- 5) Karen Keaton, RN with WVMI, testified to the PAS she completed on Claimant. Ms. Keaton stated she questioned Claimant twice about her ability to vacate in an emergency with the limited use of her left side. Ms. Keaton stated Claimant was adamant that she would be able to vacate. Ms. Keaton witnessed Claimant transferring and walking using a cane and had no reason to doubt her ability to transfer or vacate. Ms. Keaton stated Claimant's inability to transfer out of her bed was not made known to her at the assessment. Ms. Keaton stated she did not question Claimant regarding her bed because she was able to get out of a chair using a cane.

Ms. Keaton testified Claimant advised her of bladder accidents as being only once a week and she was rated as occasionally incontinent based on this information. Ms. Keaton also stated at the time of the assessment, Claimant was not taking a sleeping pill as previous testimony indicated.

- 6) 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 2010 medical evaluation.
- 2) Claimant failed to provide the assessing nurse with accurate information regarding her incontinence. Claimant was correctly rated as occasional incontinence based on the information provided to her. No deficit can be awarded in this area.
- 3) The clinical documentation regarding Claimant's hemiplegia is consistent with the testimony that Claimant is unable to get out of bed without someone assisting her with the bedrails. Although this information was not known to the assessing nurse at the time of the medical evaluation, Claimant's inability to get out of bed was not fully explored. In the event of an emergency, Claimant would be unable to vacate her home if she was in bed with the bedrails raised. Due to this oversight, a deficit in vacating in an emergency will be awarded to Claimant.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny Claimant services under the Aged/Disabled Waiver program. Claimant shall be awarded an additional deficit in vacating in an emergency.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 14<sup>th</sup> day of June 2010.**

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**Kristi Logan  
State Hearing Officer  
Member, Board of Review**