



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 8, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 27, 2010. 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).

The information submitted at your hearing revealed that you no longer qualify medically 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
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-1205

**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 27, 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.

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 & 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, [REDACTED]

-----, Homemaker, [REDACTED]

Cecilia Brown, 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 §501.3

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 March 15, 2010
- D-3 Medical Records from [REDACTED] FNP-BC
- D-4 Potential Denial Letter dated March 18, 2010
- D-5 Termination Letter dated April 5, 2010

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on March 15, 2010. A Pre-Admission Screening (PAS) form was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of vacating, bathing, grooming and dressing (D-2). One (1) additional deficit was required for Claimant to continue receiving services under the ADW program.

- 2) Claimant testified that he was contesting not receiving deficits in walking, bladder incontinence and eating. Claimant stated he is missing two (2) fingers on his right hand and cannot open cans or jars. His homemaker cooks his meals for him, which he reheats in the microwave.
- 3) Claimant testified that he has trouble walking and cannot stand for long periods. Claimant stated he uses a cane outside of the home and holds onto the walls and furniture for balance in the home. He stated he has dizzy spells due to his hypertension and falls frequently. Claimant testified that he has bladder accidents twice a week.

- 4) -----, Claimant's case manager, testified that Claimant is not completely truthful with his physician and minimizes his conditions. ----- stated Claimant is prone to falls and lives alone. If Claimant falls, ----- stated there would be no one there to help him.
- 5) Teena Testa, RN with WVMI, testified to the PAS she completed for Claimant. Ms. Testa stated Claimant was rated a Level 2 in walking, which is supervision/assistive device. Claimant's testimony that he uses a cane and holds onto furniture for support confirms his assessment as a Level 2.

Ms. Testa stated Claimant advised her at the assessment that he has bladder accidents two (2) times a week. Ms. Testa stated in order to receive a deficit for incontinence; Claimant's accidents would have to occur more than three (3) times a week.

Ms. Testa testified Claimant denied any difficulties in eating. Claimant reported to Ms. Testa that he was able to cut his foods once they were prepared for him (D-2).

- 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 his March 2010 medical evaluation.
- 2) The testimony provided by Claimant indicated he is able to walk with the assistance of a cane or furniture. In order for Claimant to receive a deficit in walking, hands on physical assistance of another person is required. No additional deficits can be awarded in this area.
- 3) Claimant reported his frequency of bladder incontinence as less than three (3) times a week. Claimant would have to have accidents more than three (3) times weekly to receive a deficit in incontinence.
- 4) Claimant denied needing assistance in cutting his foods to the assessing nurse when questioned about eating. Meal preparation does not qualify as a deficit in this area.
- 5) Claimant was correctly rated with four (4) deficits based on the information that was provided the assessing nurse during his March 2010 medical evaluation.

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 8th day of June 2010.

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