



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

November 5, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 29, 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 Hearings 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 have a deficit in vacating and therefore continue to meet the medical criteria for the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to terminate your Aged/Disabled Waiver services.

Sincerely,

Kristi Logan
State Hearings 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-1600

**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 September 29, 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 been 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:

-----, Representative/Witness for Claimant

-----, Witness for Claimant

-----, Witness for Claimant

Teresa Whittaker, Case Manager, [REDACTED]

Ivory Rose, Homemaker RN, [REDACTED]

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

Teresa McCallister, 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 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 June 21, 2010
- D-3 Potential Denial Letter dated July 6, 2010
- D-4 Termination Letter dated July 9, 2010
- D-5 Correspondence from [REDACTED] MD dated July 15, 2010

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver (ADW) program on June 21, 2010. A Pre-Admission Screening (PAS) form was completed that date by Teresa McCallister, 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 continue received ADW services.

- 2) -----, Claimant's sister, stated they were contesting Claimant not receiving deficits in the areas of medication administration and vacating in an emergency. ----- testified that her sister has Down's syndrome and is unable to read or write. ----- stated Claimant would be unable to determine which medications to take and when. She sets up Claimant's pill box for her, takes out her medications and places them in Claimant's hands ----- stated Claimant has no concept of appropriate medication dosages and could overdose if left alone. ----- stated Claimant is able to place the medications in her mouth once handed to her.

----- submitted a letter from Claimant's physician, [REDACTED] MD dated July 15, 2010 which read in pertinent parts (D-5):

We feel that based upon the patient's psychiatric disorder of a bipolar nature and also her limited intellectual capacity, it will be difficult and unsafe for the patient to be able to administer her own medications and to live by herself.

- 3) ----- stated Claimant would be mentally unable to vacate in an emergency. ----- testified that her sister would panic if there was an emergency and would not know what to do. If, for example, there was a fire, ----- stated her sister would just stare at the fire instead of getting to safety. ----- stated someone would need to physically lead Claimant out of the house in an emergency.
- 4) -----, Claimant's sister, testified that Claimant is inconsistent in following directions. ----- was present during the June 2010 assessment and stated Claimant was going through the assessing nurse's paperwork. Claimant's mother had to repeatedly redirect Claimant to another activity. ----- stated Claimant is inconsistent in following directions and would need someone to physically assist her in the event of an emergency.
- 5) Teresa McCallister testified to the PAS she completed in June 2010 for Claimant. Ms. McCallister stated she could not give a deficit in medication administration to Claimant since is able to place the medications in her mouth. Ms. McCallister stated she was unaware that Claimant would require physical assistance with vacating. Ms. McCallister testified she was advised that Claimant needed assistance in decision making and was excitable.
- 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 June 2010 medical evaluation.
- 2) The information provided indicated that Claimant would be unable to vacate in an emergency without physical assistance due to her limited mental capacity. The testimony provided revealed that Claimant would panic in a stressful situation and would need someone to lead her to safety.
- 3) Claimant will be awarded a deficit in the area of vacating in an emergency. Claimant continues to meet the medical criteria for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate Claimant's Aged/Disabled Waiver services. Claimant will be awarded a deficit in vacating.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th day of November 2010.

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