



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

April 23, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 30, 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 would be unable to vacate in the event of an emergency without physical assistance and should have been awarded a deficit in that area. With the addition of a deficit in vacating, you continue to meet the medical criteria required for the Aged/Disabled Waiver program.

It is the decision of the State Hearing Officer to **Reverse** 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: 09-BOR-2083

**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 March 30, 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. This fair hearing was convened on March 30, 2010 on a timely appeal, filed October 19, 2010.

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]

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.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to terminate Claimant's ADW 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 October 6, 2009
- D-3 Potential Denial Notice dated October 12, 2009
- D-4 Correspondence from [REDACTED] DO dated October 19, 2009
- D-5 Termination Notice dated November 2, 2009

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on October 6, 2009. 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 bathing, dressing, grooming and continence (D-2). One (1) additional deficit was required for Claimant to continue receiving services under the ADW program.

- 2) -----, Claimant's case manager, stated they were contesting Claimant not receiving a deficit in vacating in an emergency. ----- testified that Claimant has anxiety seizures that are brought on by stress. ----- felt like in the event of an emergency, Claimant would have a seizure and be unable to vacate without physical assistance.
- 3) ----- submitted a letter from Claimant's physician on October 19, 2009 to WVMI for consideration which read (D-4):

----- has a seizure disorder. Also has an anxiety disorder associated with stress which would prohibit the patient from leaving the home in an emergency situation.

- 4) -----, Claimant's homemaker, testified that she has witnessed Claimant's seizures. ----- stated Claimant gets anxious over insignificant things and will have a seizure. Claimant's limbs draw up and she is unconscious. ----- stated she would be unable to carry Claimant out alone during a seizure in the event of an emergency.
- 5) Teena Testa, RN with WVMI, testified to the PAS she completed on Claimant. When Ms. Testa questioned Claimant about vacating, Claimant responded "her left knee is giving out on her and she did not know how to answer this and states she is off balance when she walks and states she has a fear of steps" (D-2). Ms. Testa observed Claimant walking around the home unassisted and with a steady gait. Ms. Testa stated she felt Claimant would be able to vacate in an emergency with supervision.

Ms. Testa stated she was advised of Claimant's anxiety seizures during the assessment. However, the documentation provided by Claimant's physician indicated that Claimant had seizures and an anxiety disorder, but did not specify the frequency of the seizures or that they were truly brought on by stress. Ms. Testa stated she felt with supervision and direction, Claimant would be able to vacate.

- 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 October 2009 medical evaluation.
- 2) Although the documentation submitted from Claimant's physician did not indicate that Claimant's seizures are stress related, it is clear that Claimant suffers from anxiety attacks and seizures which could hinder her ability to vacate in an emergency. Claimant also expressed doubts during the assessment regarding her ability to vacate without assistance. One (1) additional deficit will be awarded Claimant in the area of vacating.
- 3) Claimant continues to meet the medical criteria required to receive Aged/Disabled Waiver services.

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 23rd day of April 2010.

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