



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

Board of Review  
Joe Manchin III  
Governor

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

April 16, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 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 meet the medical criteria required for the Aged/Disabled Waiver program.

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  
[REDACTED]  
West Virginia Medical Institute

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-2245**

**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 25, 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 3/25/2010 on a timely appeal, filed November 18, 2009.

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

-----, Witness for Claimant

-----, Case Manager, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services  
Teena Testa, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

**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 October 14, 2009
- D-3 Potential Denial Letter dated October 19, 2009
- D-4 Termination Letter dated November 12, 2009

**Claimants' Exhibits:**

- C-1 Correspondence from [REDACTED] DO dated October 21, 2009
- C-2 Medical Records from [REDACTED] MD and [REDACTED] Hospital

**VII. FINDINGS OF FACT:**

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on October 14, 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 eating, grooming and continence (D-2). Two (2) additional deficits were required for Claimant to continue receiving services under the ADW program.

- 2) Claimant's case manager -----, stated they were contesting Claimant not receiving deficits in the areas of bathing, dressing, vacating in an emergency and medication administration.

██████████ testified that Claimant has several health conditions that would prevent her from vacating in an emergency. Claimant has COPD which causes shortness of breath and the need to take breaks often when walking. ██████████ stated Claimant is unsteady on her feet and has chronic pain. ██████████ stated that when Claimant was questioned by the assessing nurse about vacating, Claimant was not thinking about the event of a fire and that she would be unable to vacate without assistance.

- 3) ██████████ testified Claimant's conditions also prevent her from bathing independently. Claimant uses a shower chair but cannot bend down to wash her lower body due to her chronic back pain. ██████████ presented a letter from Claimant's physician, ██████████ DO that read in pertinent parts (C-1):

While the patient may have stated that she can bend down and wash her feet and put on her shoes I think it would dramatically increase her pain level. I believe she would benefit from assistance with activities of daily living including eating, grooming, bathing and dressing.

- 4) Claimant's daughter, -----, testified to her mother's need for assistance with daily living activities. -----stated Claimant does not bathe or dress daily due to the pain in her back and legs. She is short of breath and unsteady on her feet. Claimant's pain medications affect her cognitive abilities. -----sets up Claimant's pill box for her.
- 5) Claimant testified that her homemaker cooks and cleans for her and puts lotion on her hip. Claimant stated her homemaker helps with bathing by drying her off. Claimant stated the homemaker also puts her socks on for her.
- 6) Teena Testa, RN with WVMI testified the PAS she completed on Claimant. During the assessment, Ms. Testa observed Claimant walking with a steady gait with no distress in her breathing. Claimant denied needing assistance with vacating in an emergency and Ms. Testa felt that Claimant understood the question.

Claimant also advised Ms. Testa that she was able to get into and out of the bathtub independently and was able to wash her lower body with a long handle sponge. Again, Claimant denied needing assistance with bathing.

Ms. Testa responded to Dr. ██████████ letter regarding Claimant's need for assistance with daily living activities. Dr. ██████████ cannot evaluate Claimant's abilities in the home as he is not there to witness what Claimant can and cannot do for herself. Ms. Testa stated Claimant was alert and oriented the day of the assessment and had no reason to doubt Claimant's statements.

- 7) 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 three (3) deficits on her October 2009 medical evaluation.
- 2) Testimony indicated Claimant's daughter assists her mother with medication administration by setting up her pill box. Claimant was correctly evaluated as needing supervision with medication administration as Claimant is able to take her own medications. A deficit cannot be awarded in this area.
- 3) Claimant denied needing assistance with bathing, dressing or vacating when questioned by the assessing nurse. The letter from Claimant's physician only relayed that she would benefit from assistance with daily living activities. Claimant was correctly evaluated on the October 2009 PAS based on the information she provided during the assessment process.

**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 16<sup>th</sup> day of April 2010.**

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