



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

Martha Yeager Walker  
Secretary

August 5, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 23, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your services under the Aged/Disabled Waiver program.

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 no longer meet the medical criteria to remain eligible for the Aged/Disabled Waiver program.

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

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Bureau of Senior Services  
First Care Services, Inc.

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1263**

**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 July 23, 2009 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 July 23, 2009 on a timely appeal, filed 5/1/2009.

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

-----, Claimant's Sister

-----, Homemaker

-----, Case Manager, First Care Services

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

Christine Miller, 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. QUESTIONS TO BE DECIDED:**

The question to be decided is whether or not the Department's decision to terminate Claimant's services through the ADW program is correct.

**V. APPLICABLE POLICY:**

Aged/Disabled Waiver Policy Manual §501.3

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Waiver Policy Manual §501.3
- D-2 Pre-Admission Screening Form (PAS) dated April 6, 2009
- D-3 Potential Denial Letter dated April 13, 2009
- D-4 Termination Letter dated April 28, 2009

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

1) Claimant's eligibility for the ADW program was reevaluated on April 6, 2009. Christine Miller, RN with the West Virginia Medical Institute (WVMI) completed a PAS that date. Claimant was awarded a deficit in continence (D-2).

2) A termination letter dated April 28, 2009 was issued which read in pertinent parts (D-4):

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS indicated deficiencies in 1 area. Because you have less than 5 deficits at the level required, your services are being terminated/denied.

3) -----, Claimant's sister, testified that Claimant's conditions have worsened since the assessment. She stated he now walks with a cane and uses oxygen at night. He gets confused when to take his medications and has been known to take double doses.

- 4) -----, Claimant's homemaker, testified that Claimant started having problems with his knee in July 2009. He stumbles frequently and uses a cane. She has to remind him to use fresh towels when bathing. She cooks for him as he cannot cook for himself. She stated he needs reminders with all daily living activities, including taking his medications.
- 5) -----, Claimant's case manager, testified that Claimant has improved since he started receiving homemaker services but feels he will only deteriorate if he loses his services. He now uses a cane and has problems walking up stairs. He lives on the third floor of his building where the elevator is constantly out of order. Ms. [REDACTED] fears Claimant would be unable to vacate the building in an emergency.
- 6) Christine Miller, RN with WVMI testified to her findings as indicated on the PAS. The day of the assessment, Claimant met her in the lobby of his building and was walking independently. He told her he was moved from the first floor to the third floor because he was able to walk better since he first moved in. Claimant told Ms. Miller he felt like he would be able to get out of the building if there was an emergency.

Claimant denied needing help bathing and stated he usually showered before the homemaker arrived. He stated he was able to feed himself and cut up his own food. He took his own medications with prompting from his homemaker.

- 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/her 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 one (1) deficit on his April 2009 medical evaluation.
- 2) The testimony provided indicated Claimant required prompting in bathing and medication administration. In order to receive deficits in these areas, Claimant would need hands on assistance. Claimant was correctly assessed as a Level 1, prompting and supervision, in bathing and medication administration. Also, cooking is considered meal preparation and cannot be awarded as a deficit in eating.
- 3) Although Claimant's condition has deteriorated since April 2009, he no longer met the criteria required to continue receiving Aged/Disabled Waiver services at the time the assessment was completed.

#### **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 benefits.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 5<sup>th</sup> day of August 2009.**

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**Kristi Logan  
State Hearing Officer**