



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

September 4, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for 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 do not meet the medical criteria necessary to receive services through the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny your application for Aged/Disabled Waiver services.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Board of Review  
Bureau of Senior Services

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1394**

**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 August 25, 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 August 25, 2009 on a timely appeal, filed May 27, 2009.

**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

Kay Ikerd, RN, Bureau of Senior Services

Teena Testa, RN, West Virginia Medical Institute

All participants 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 deny Claimant benefits under the Aged/Disabled Waiver program was 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 May 14, 2009
- D-3 Potential Denial Letter dated May 18, 2009
- D-4 Denial Letter dated June 3, 2009

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) Claimant was evaluated for medical eligibility for the ADW program on May 14, 2009. Teena Testa, RN with the West Virginia Medical Institute (WVMI) completed a Pre-Admission Screening Form (PAS) that date. Claimant was awarded deficits in vacating in an emergency, bathing and grooming (D-2 and D-4).

Two (2) additional deficits were required for Claimant to be medically eligible for ADW services.

- 2) Claimant contested the areas of eating and dressing for which she did not receive deficits. Claimant testified that she is legally blind and can barely see. She cannot cook for herself as she is afraid to use the stove. She mostly eats sandwiches or foods from a can. She does not use sharp knives but is able to use a spoon and fork.
- 3) Claimant stated that she has problems with dressing due to her vision problems. She cannot see to button her clothes and manages by touch only. She has

difficulty matching her clothes because everything looks dark to her. Claimant sometimes puts her shoes on the wrong feet. She notices once they are on that that she has put them on incorrectly.

- 4) -----, Claimant's case manager with Allied Services, testified to Claimant's limitations due to her vision. Claimant is able to dress herself but cannot differentiate between dark colors. She has a hard time with eating utensils because she cannot see to eat.
- 5) 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 May 2009 medical evaluation.
- 2) The testimony provided revealed that although Claimant's vision problems cause her difficulty with her daily living skills, she is able to feed herself and dress herself. Hands on assistance in eating and dressing would be required for Claimant to receive deficits in those areas.
- 3) Claimant does not meet the medical criteria required by policy to qualify for Aged/Disabled Waiver services.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant services under the Aged/Disabled Waiver program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 4<sup>th</sup> day of September 2009.**

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**Kristi Logan  
State Hearing Officer**