



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 4, 2009

-----for -----  
-----  
-----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----'s hearing held October 20, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate -----'s 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 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 which was submitted at your hearing revealed that ----- no longer meets the medical criteria required to continue receiving Aged/Disabled Waiver services.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to terminated - ----'s 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] County Commission on Aging

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1630**

**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 October 20, 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 October 20, 2009 on a timely appeal, filed August 10, 2009.

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:**

-----, Power of Attorney and Witness for Claimant

-----, Case Manager, [REDACTED] County Commission on Aging

-----, Homemaker RN, [REDACTED] County Commission on Aging

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. 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 July 9, 2009
- D-3 Potential Denial Letter dated July 13, 2009
- D-4 Correspondence from Dr. [REDACTED] dated July 21, 2009
- D-5 Termination Letter dated July 31, 2009

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on July 9, 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 vacating in an emergency, dressing and continence. A letter submitted to WVMI after the assessment from Claimant's physician resulted in the addition of grooming as a deficit (D-2 and D-4). One (1) additional deficit was required for Claimant to continue receiving services under the ADW program.

- 2) -----, Claimant's Power of Attorney and daughter, testified on Claimant's behalf. ----- stated her mother has Palmers pestiluar cirrhosis which causes her hands to swell. She cannot squeeze, open cans or bottles. Her homemaker prepares and cuts food for her. Claimant can eat once food is prepared.

- 3) -----stated Claimant does not bathe without assistance. She washes her mother's back and lower limbs. Claimant is able to wash her own face. Claimant gets out of breath while bathing due to her COPD and must take breaks.
- 4) Claimant needs assistance getting up from a seated position until she can get on her walker or cane. She falls when she is home alone and cannot reach her walker or cane. -----stated Claimant falls frequently.
- 5) -----stated she stayed with her mother from January to April of this year. She has not shown any improvement, and if anything her condition is declining. -----completed Claimant's previous assessment in 2008 but was unable to be present this year. Her sister, [REDACTED] was present for the July 2009 assessment.

-----stated her mother had taken a high dose of steroids the day of the assessment which enabled her more than usual. She was bedridden for days after because she over did it that day. -----stated her sister did not contest her mother's answers at the assessment because she did not want to do so in her mother's presence. Her mother is fearful of being placed in a nursing home and -----felt she didn't answer the questions truthfully.

- 6) Teena Testa, RN with WVMI testified to the PAS she completed in July 2009. Claimant's daughter and homemaker RN were present during the assessment. Claimant was adamant that she did not need any assistance in bathing and was bathed each day before the homemaker's arrival. Claimant was able to touch her shoulders, back and shins and had she no reason to doubt that Claimant could bathe herself.

Claimant told Ms. Testa she could cut her own foods. She did not document if she tested Claimant's hand grips but took Claimant's word. Ms. Testa observed Claimant get up from the couch with the aid of her cane and walked without physical assistance. Ms. Testa was advised that Claimant's last fall was in May 2009.

Ms. Testa stated the homemaker RN and Claimant's daughter provided no contradictions to Claimant's answers at the assessment.

- 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 four (4) deficits on her July 2009 medical evaluation.
- 2) -----testified that Claimant was functioning better than normal the day of the assessment and led the assessing nurse to believe that her functional abilities were better than they actually were due to her fear of being admitted to the nursing home. However, Claimant’s daughter and homemaker RN did not contradict Claimant at the assessment. The assessing nurse properly evaluated Claimant with the information provided to her at the assessment.
- 3) Claimant no longer meets the medical criteria required to continue receiving services under the Aged/Disabled Waiver program.

**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 4<sup>th</sup> day of November 2009.**

---

**Kristi Logan  
State Hearing Officer**