



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Joe Manchin III  
Governor

Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

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

December 1, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 19, 2009. 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 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 that you have a deficit in transferring and therefore continue to meet the medical criteria required to receive Aged/Disabled Waiver services.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to terminate your 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  
Coordinating Council for Independent Living

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1717**

**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 November 19, 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 November 19, 2009 on a timely appeal, filed March 13, 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

-----, Case Manager, Coordinating Council for Independent Living

Cecilia Brown, 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.

This hearing was held by videoconference.

**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 Medical Necessity Evaluation Request Form dated January 7, 2009
- D-3 Pre-Admission Screening Form dated March 5, 2009
- D-4 Potential Denial Letter dated March 10, 2009
- D-5 Termination Letter dated March 25, 2009

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on March 5, 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, walking and wheeling. One (1) additional deficit was required for Claimant to continue receiving services under the ADW program.

- 2) Claimant contested not receiving a deficit in transferring. Claimant testified that she requires hands on assistance to transfer from her electric wheelchair to her manual wheelchair. She stated she uses the electric chair in her home but it does not fold up to fit into a car. She transfers from the electric chair to a manual one before she leaves the house.

Claimant testified that she was hospitalized in February 2009 and has had problems with her legs swelling ever since. She stated it is because of the swelling that someone must help her transfer from one wheelchair to the other.

- 3) Teena Testa testified to the PAS she completed in March 2009. Ms. Testa stated she and Claimant discussed her ability to transfer from her bed to wheelchair and off and on the toilet. Ms. Testa stated there was no discussion regarding Claimant's ability to transfer from her electric wheelchair to the manual wheelchair.
- 4) 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 March 2009 medical evaluation.
- 2) Credible testimony from Claimant indicated that she has required hands on physical assistance from another person to transfer from one wheelchair to another prior to the assessment in March 2009. Claimant was already awarded deficits in walking and wheeling, lending credibility to Claimant's testimony regarding her inability to transfer from wheelchair to wheelchair. Testimony from the assessing nurse suggested that the issue of transferring was not fully explored at the assessment.
- 3) Claimant will be awarded an additional deficit in the area of transferring. Claimant continues to meet the medical criteria required for the Aged/Disabled Waiver program.

### **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.

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

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision  
Form IG-BR-29

**ENTERED this 1<sup>st</sup> day of December 2009.**

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