



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

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

July 22, 2011

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RE: -----  
Action No: 11-BOR-1172

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 12, 2011. 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 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 ----- no longer meets the medical criteria to continue receiving Aged/Disabled Waiver services.

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

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services  
West Virginia Medical Institute

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1172**

**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 12, 2011 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 a timely appeal, filed April 29, 2011.

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 and 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  
, -----, Legal Aid

Kay Ikerd, RN, Bureau of Senior Services  
Brenda Myers, RN, West Virginia Medical Institute

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

This hearing was held 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 March 9, 2011
- D-3 Potential Denial Letter dated March 14, 2011
- D-4 Termination Letter dated April 15, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on March 9, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of vacating in an emergency, bathing, and grooming (D-2). Two (2) additional deficits were required for Claimant to continue receiving ADW services.

- 2) Claimant's representative, -----with ----- contested Claimant not receiving deficits in urinary incontinence, dressing and transferring. Claimant testified that he takes a fluid medication for a heart condition that causes him to experience frequent urination. Claimant stated he cannot get to the bathroom in time before having an accident. Claimant testified that he advised the WVMI nurse during the assessment that he often had urinary urgency and had difficulty making it to the bathroom in time. Claimant testified that he has pain in his back and hips and it is during "flare ups" that he cannot walk quickly enough to prevent an accident.

Claimant stated he cannot get up from a seated position without using the arms of a chair for assistance. Claimant testified the day of the assessment, he was seated in a recliner/rocker section of the couch and rocked back and forth several times to get to a standing position. Claimant stated if he were seated in a kitchen chair, he must use the kitchen table to help himself up. Claimant stated he cannot pull himself up without holding onto something for assistance.

Claimant testified that when his hip and back “go out” he requires the assistance of his homemaker to stand up. Claimant stated this occurs 3-4 times a week. Claimant stated he is unable to take prescription pain medications due to his heart condition. His physician will occasionally prescribe him something for pain, but only when he is in pain for weeks at a time.

- 3) ----- contended that the WVMi nurse should have awarded Claimant a deficit in dressing due to his shortness of breath. Claimant was given a deficit in bathing due to his frequency with shortness of breath. ----- also argued that Claimant should have been given a deficit in transferring as Claimant was awarded a deficit in vacating in an emergency based on Claimant’s disclosure of his back and hip problems, which is the very reason why he cannot transfer independently.
- 4) Brenda Myers, RN with WVMi testified to the PAS she completed on Claimant in March 2011. Ms. Myers stated in regard to dressing, Claimant denied needing any assistance. Ms. Myers stated Claimant advised that he could put on his own socks and shoes, despite shortness of breath. Ms. Myers stated she observed Claimant bending over during the assessment and noticed no shortness of breath.

Ms. Myers stated Claimant was given a deficit in bathing not because bending over in the shower caused his shortness of breath, but because the heat from the shower caused difficulty in breathing and that he disclosed that his homemaker washed his feet for him.

Ms. Myers documented Claimant’s use of a fluid pill in the PAS and that the reason Claimant had urinary accidents were due to his inability to walk fast enough to make it to the bathroom before emptying his bladder. Ms. Myers stated Claimant’s inability to walk quickly enough is a mobility issue and urinary incontinence is the loss of sphincter control. She did not give Claimant a deficit in urinary incontinence because he referred to his mobility hindering him from getting to the bathroom before an accident.

Ms. Myers testified that Claimant advised her that the majority of the time, he used furniture or his cane to help him transfer. Claimant stated during the assessment that occasionally his back will flare up and his homemaker or children will assist him in transferring, but denied needing physical assistance on a regular basis. Claimant was awarded vacating as Claimant voiced concern that he would be able to vacate timely in an emergency situation, noting again he occasionally required assistance during his back flare ups. Ms. Myers noted Claimant walked at a normal pace and was steady during the assessment.

Ms. Myers stated she reviewed each area with Claimant at the end of the assessment, repeating the answers he had given to which there was no disagreement. Claimant's homemaker was present that day, but stayed in another room and did not participate in the assessment.

- 5) The March 9, 2011 PAS states in pertinent parts (D-2):

Dressing: He states he can dress himself. He can get pullover shirts on by himself. He states he has to sit down and get his pants on and states he can get elastic type sweatpants on or jeans on. He says he can get legs through pants legs and pull up his own pants. He told me he can fasten and zip pants. He states he doesn't wear button up shirts but can button if needed to. He states he can put his own socks and shoes on. He says he can be SOB [short of breath] at times but he does his own socks and shoes on [sic].

Continence: He states he takes a fluid pill and it is hard for him to make it to the bathroom on time because his back and hip will be hurting and he cannot walk quickly and will start to go before he can get to the bathroom. He states it occurs at least once a day. He denies wearing pull ups or pads but states if his underwear is too damp he will just change them.

Transferring: Assistive device. Member uses the furniture to help push himself up and steady him as he stands. He states he sleeps in a regular bed or the couch. He states every now and then his back will flare up and will need some assistance from one of his kids or HM [homemaker] to get up from the bed or couch. He denies that he needs physical assistance to transfer on a regular basis. He says the majority of the time he uses the furniture or his cane to help himself transfer.

- 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 his March 2011 medical evaluation.
- 2) The WVMi nurse documented reviewing all areas of dressing with Claimant during the assessment and Claimant denied needing any assistance in dressing. While testimony given indicated Claimant experiences shortness of breath when bending over, Claimant specifically advised the nurse that he managed to put on his socks and shoes independently, despite shortness of breath in March 2011.
- 3) Claimant disclosed that he transferred with the aid of furniture or his cane to the WVMi nurse. Claimant mentioned the need for physical assistance during times when his back and hip were hurting. The WVMi nurse explored this area with Claimant during the assessment and documented that Claimant noted the need for hands on assistance as irregular and the majority of the time he transferred without physical assistance.
- 4) Claimant advised the WVMi nurse that he could not make it to the bathroom on time due to the inability to walk quickly enough. The nurse documented Claimant's use of a fluid pill but Claimant did not indicate that the cause of his urinary incontinence was due to an urgency brought on by his medication, only that he could not walk fast enough before vacating his bladder.

- 5) The WVMi nurse assessed Claimant as level 1, self/prompting in dressing based on the information provided to her by Claimant at the time of the assessment. Claimant denied utilizing assistance in dressing and based on the information made known to the nurse in March 2011, he was correctly assessed. No deficit can be awarded in this area.
- 6) Claimant denied requiring physical assistance regularly in transferring to the WVMi nurse. Claimant was correctly assessed as a level 2, supervision/assistive device in transferring for use of furniture or a cane when transferring. No deficit can be awarded in this area.
- 7) Claimant's mobility cannot be considered when determining incontinence and any urgency caused by medications was not reported during the assessment. No deficit can be awarded in this area.
- 8) Claimant no longer meets the medical criteria to continue receiving Aged/Disabled Waiver services.

**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 21<sup>st</sup> day of July 2011.**

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**Kristi Logan**  
**State Hearing Officer**