



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

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

August 17, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 16, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny 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 § 501.3).

The information submitted at your hearing revealed that you do not meet the medical criteria as set forth in policy to receive Aged/Disabled Waiver services.

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

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-1403

**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 16, 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 June 2, 2011.

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
-----, Witness for Claimant
-----, Witness for Claimant

Angel Khosa, Bureau of Senior Services
Teresa McCallister, West Virginia Medical Institute

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

All participants testified by phone.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's decision to deny Claimant services 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 dated April 26, 2011
- D-3 Notice of Denial dated May 26, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the ADW program on April 26, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas bathing, dressing and grooming (D-2). Two (2) additional deficits were required for Claimant to be medically eligible for ADW services.

- 2) -----, Claimant's mother, testified that Claimant would be unable to vacate in an emergency without assistance. ----- stated Claimant would be unable to get out of the house and down the hill to reach the car by himself.

----- stated Claimant should have received a deficit in medication administration. ----- stated she has to set up her son's medication box because he gets confused as to when to take his morning medications and his evening medications. ----- stated Claimant needs someone to prepare his medications because she has her own to take care of.

- 3) -----, Claimant's cousin testified that Claimant would be unable to get out of his house during an emergency. -----stated Claimant uses oxygen at night and it would take 5-10 minutes for him to remove his oxygen and get out of bed. ----- states Claimant walks

very slowly due to his size and cannot run or hurry out of the house if there was an emergency.

- 4) Teresa McCallister of WVMi testified to the PAS she completed for Claimant in April 2011. Ms. McCallister was advised during the assessment that Claimant would be able to vacate with supervision. Ms. McCallister noted Claimant's shortness of breath when walking and his anxiety. Ms. McCallister stated she observe Claimant transferring without physical assistance and was not advised of Claimant's possible need for physical assistance when vacating.

Ms. McCallister testified that she was advised that Claimant could administer his own medications. Ms. McCallister documented in the PAS that Claimant's mother set up his medications for him, which is considered prompting and supervision and does not count as a deficit.

- 5) Pertinent parts of the April 2011 PAS read (D-2):

Vacating: Discussed with those present and determined that app[licant] is able to vacate home with supervision due to intermittent SOB [shortness of breath] and potential anxiety.

Transferring: Observed app rise from couch by scooting to front edge of seat, then using hands to push off seat to stand. Stiffness of trunk observed.

Walking: Observed app walk approx. 12-15 ft. with slow, limping gait, and mild SOB. He denies device use in home.

Medication Administration: Mother sets up and app places in mouth at approp. times

- 6) 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 holds that an individual must receive five (5) deficits on the PAS assessment tool in order to qualify medically for the Aged/Disabled Waiver program. Claimant was awarded three (3) deficits on his April 2011 medical evaluation.
- 2) Testimony from Claimant's family indicated that due to Claimant's shortness of breath and slow gait, he would be unable to vacate his home in an emergency without assistance. Claimant was assessed as requiring supervision for vacating by the WVMi nurse based on the information provided to her during the evaluation. Claimant is able to transfer and walk without physical assistance and there was no mention in the testimony or to the WVMi nurse during the assessment that Claimant would require hands on physical assistance to vacate during an emergency. The WVMi nurse correctly evaluated Claimant as being able to vacate with supervision based on the information provided in April 2011.
- 3) Claimant is able to physically administer his own medications, although his medications are organized in a pill box for him. In order for Claimant to receive a deficit in medication administration, he would have to be physically unable to place his medications in his mouth, with someone doing this for him. Claimant was correctly assessed as requiring prompting and supervision with medication administration which does not constitute a deficit.

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 17th day of August 2011.

Kristi Logan
State Hearing Officer