



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

February 22, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 6, 2011. 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 you have a deficit in vacating in an emergency. With addition of this deficit, you continue to meet the medical criteria for 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

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

-----,

Claimant,

v.

Action Number: 10-BOR-2309

**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 January 6, 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.

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

-----, Witness for Claimant

-----, Homemaker

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.

All participants testified 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 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 September 8, 2010
- D-3 Potential Denial Letter dated September 14, 2010
- D-4 Termination Letter dated October 4, 2010

Claimants' Exhibits:

- C-1 Correspondence from ----- and [REDACTED]

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on September 8, 2010. A Pre-Admission Screening Form (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute.

Claimant was awarded deficits in the areas of bathing, grooming, continence and dressing (D-2). One (1) additional deficit was required for Claimant to continue receiving ADW services.

- 2) Claimant contested not receiving a deficit in the area of vacating in an emergency. Claimant testified that she uses a cane to walk and moves slowly. Claimant stated she has a seizure disorder and frequently falls during a seizure. Claimant stated she does not experience an "aura" before a seizure, and does not have any indication when one is oncoming. Because of this, Claimant stated she wears a helmet except at bedtime to prevent head injury. Claimant stated she is disoriented for days after having a seizure.

- 3) -----, Claimant's sister, stated Claimant's condition has not improved since her assessment last year. ----- testified that Claimant has a degenerative spine and arthritis. These conditions in addition to Claimant's seizure disorder would prevent her from vacating in an emergency.
- 4) -----, Claimant's niece and homemaker, testified that Claimant would be unable to vacate in an emergency due to the need to walk with a cane and the possibility of a seizure occurring during an emergency.
- 5) Brenda Myers, RN with WVMi testified to the PAS she completed on Claimant in September 2010. Ms. Myers stated when she questioned Claimant about vacating, Claimant advised that she could get out of her apartment by using the exits, but may need supervision in case she became confused. Ms. Myers stated she reviewed the information on the PAS at the end of the assessment with those present and there was no contradiction regarding Claimant's ability to vacate in an emergency. Ms. Myers stated Claimant's seizure disorder was not fully explored during the assessment.
- 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 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 September 2010 medical evaluation.
- 2) The testimony given by Claimant and her family members indicate Claimant's seizures are frequent and unpredictable. Claimant wears a helmet throughout the day to prevent head injuries that could result from falling during a seizure. Claimant also becomes disoriented after having a seizure. Claimant's seizure disorder coupled with her slow movement would prevent Claimant from being able to safely vacate her home in the event of an emergency.
- 3) Claimant will be awarded a deficit in the area of vacating in an emergency. Claimant continues to meet the medical criteria to receive ADW services.

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. Claimant will be awarded a deficit in vacating in an emergency.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd day of February 2011.

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