



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

September 14, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 1, 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 the 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 services under the Aged/Disabled Waiver program for -----.

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-686**

**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 September 1, 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 January 12, 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

-----, -----

-----, Homemaker RN, [REDACTED] Services

-----, Witness for Claimant

Sara Birckhead, 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.

**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 dated December 21, 2010
- D-3 Potential Denial Letter dated December 28, 2010
- D-4 Termination Letter dated January 18, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on December 21, 2010. A Pre-Admission Screening Form (PAS) was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI).

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

- 2) Claimant testified that the day of the assessment his case manager cancelled and was not present. Claimant stated his homemaker was present during the assessment but he was nervous without his case manager. Claimant testified that he would be unable to vacate his apartment in the event of an emergency. Claimant stated he has panic attacks approximately three (3) times a week and is prescribed Valium for the attacks. Claimant stated when he feels an onset of an attack, it usually takes the Valium fifteen (15) minutes to take effect. Claimant stated stress, fear and loud noises can trigger panic attacks. Claimant stated he experiences dizziness, confusion and difficulty breathing

when he has a panic attack. He has to call his neighbor to come over and assist him during an attack.

Claimant testified that he is on dialysis three (3) times a week and after a dialysis treatment, he is exhausted and stays in bed for days after. Claimant stated he requires physical assistance to get into bed after dialysis.

Claimant admitted that he advised the WVMi nurse that he would be able to vacate during an emergency, but could not recall why he had told her he could. Claimant stated he was nervous during the assessment.

- 3) -----, Claimant's neighbor, testified that she has lived next door to Claimant for fourteen (14) months. -----stated she provides informal assistance to Claimant when he has a panic attack. -----stated Claimant will call her for help when he is having an attack, which sometimes occurs at night. -----stated Claimant is confused during an attack, which is caused by stress and fear. -----testified Claimant is weak after receiving dialysis and has to lie down after treatments. ----- stated Claimant would not be able to vacate in an emergency if he was having a panic attack or if he had recently underwent dialysis.
- 4) -----, Claimant's Homemaker RN testified that she has known Claimant since June 2010. ----- stated Claimant has nausea and is weak after dialysis. She stated he requires physical assistance after dialysis and would be unable to vacate independently if there was an emergent situation subsequent to a treatment.
- 5) Teena Testa, RN with WVMi testified to the PAS she completed for Claimant in December 2010. Ms. Testa stated Claimant advised her that he would be able to physically vacate his apartment in an emergency. Ms. Testa stated after discussing vacating with Claimant, she felt like he would need directions in order to vacate and rated him as being able to vacate with supervision.

Ms. Testa stated Claimant did not have any symptoms of a panic attack during the assessment and she observed him walking without assistive devices. She stated Claimant was alert and trusted his statement that he would be physically able to vacate in an emergency. Ms. Testa pointed out that there was no mention of Claimant's condition after dialysis by either Claimant or the homemaker, nor were there any objections when she reviewed the answers as given 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

- 7) The December 21, 2010 PAS reads in pertinent part (D-2):

In the event of an emergency, client states he feels he could get out of the home. His gait was steady as he walked into his bedroom. Client did not use any medical devices nor did he hold onto the furniture as he walked in the home. I informed the client I feel he would need supervision, a person to tell him which way to go in the event of an emergency. Client did agree with me. We did not feel he would need someone to take hold of his hand and help him out of the building. Client did agree.

## **VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates 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 received four (4) deficits on his December 2010 PAS in conjunction with his annual medical evaluation.

- 2) Testimony indicated Claimant has medical problems that would prevent him from vacating his home in the event of an emergency. However, these issues were not brought to the WVMi nurse's attention by those present at the assessment. While Claimant's medical conditions were documented on the PAS, the symptoms of these conditions that would prevent his ability to vacate were not given during the assessment.
- 3) Testimony implied Claimant was nervous during the assessment without his case manager when he advised the WVMi nurse he could vacate in an emergency. Claimant's representative argued the WVMi nurse must have had a reason to contradict Claimant's statement during the assessment by discussing the possible need for prompting or supervision in order to vacate. However, the nurse documented Claimant's ability to ambulate and transfer independently, ruling out that her hesitation in Claimant's ability to vacate without some assistance was due to a physical incapacity.
- 4) The WVMi nurse correctly assessed Claimant as being able to vacate in an emergency with prompting and supervision based on the information made known to her the day of the medical evaluation.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate Claimant's 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 14<sup>th</sup> day of September 2011.**

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