



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 2, 2011

RE: -----
Action No: 11-BOR-913

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 21, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate Aged/Disabled Waiver services for -----.

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 -----'s 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 AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-913

**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 21, 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 March 11, 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

-----, Case Manager,

-----, Homemaker,

Angela Khosa, 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 February 8, 2011
- D-3 Potential Denial Letter dated February 11, 2011
- D-4 Termination Letter dated March 2, 2011

Claimants' Exhibits:

- C-1 Correspondence to -----, [REDACTED] dated March 7, 2011,
Receipt from [REDACTED] dated March 2, 2011 and
Plan of Care from December 2010 through May 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on February 8, 2011. 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 vacating in an emergency, bathing, grooming and urinary incontinence (D-2). One (1) additional deficit was required for Claimant to continue receiving ADW services.

2) ----- testified that she has been Claimant's case manager since March 2011. ----- stated Claimant's plan of care indicates that Claimant requires assistance in eating and dressing. ----- stated Claimant's homemaker writes down what she has assisted Claimant with each day and the plan of care log documented that Claimant's homemaker has assisted her with eating and dressing since December 2010 (C-1).

3) -----, Claimant's homemaker testified that she has worked for Claimant since January 2011. ----- stated she cuts Claimant's foods up for her, such as meats and sandwiches, due to weakness in Claimant's hands. ----- stated Claimant is easily choked while eating and she is close by to encourage Claimant to drink often. ----- testified that Claimant spills food on herself and onto the floor, which she cleans up.

----- testified that she assists Claimant with dressing. ----- stated she helps Claimant put on her shirts and buttons them for her, pull her pants up once Claimant's legs are in them and puts on her socks and shoes on for her. ----- stated Claimant is often dizzy and she has to steady Claimant physically while she is getting dressed.

----- stated Claimant has confusion and is hard of hearing. Claimant can become stressed easily and may not have answered truthfully during the assessment.

4) Claimant testified that her former case manager, -----, was unable to attend the assessment due to inclement weather and the date of the assessment was her homemaker's day off. Claimant stated her son and daughter-in-law were home with her during the assessment but did not participate.

Claimant stated she was initially confused as to who the WVMi nurse was and why she was at her home that day. Claimant stated she was nervous during the assessment without her case manager and homemaker present. Claimant stated the WVMi nurse seemed to be in a hurry due to the bad weather.

Claimant stated she has Meniere's disease and experiences dizziness and ringing in her ears. Claimant testified that she can put one arm into a sleeve and then her homemaker puts her other arm in and buttons her shirts. Claimant stated she will put her legs into her pants, but her homemaker helps her stand up, steadies her and pulls her pants up the rest of the way. Claimant stated she gets dizzy bending over and her homemaker puts her socks and shoes on for her. Claimant stated when her homemaker is not there, her son or daughter-in-law help her get dressed.

Claimant stated she often chokes while eating and her homemaker supervises her during meals. Claimant testified that she has arthritis in her hands and her homemaker cuts her meats for her. Claimant stated her homemaker cleans any spills made while eating.

Claimant testified that she realized after the assessment there was a piece missing from her hearing aid. She had the part replaced in March 2011 and notified her case manager of the problem and the possibility that she did not answer the questions during the

assessment correctly (C-1). Claimant stated she experiences confusion and memory loss and cannot remember how she answered the WVMi nurse during the assessment.

- 5) Teena Testa, RN with WVMi testified to the PAS she completed for Claimant in February 2011. Ms. Testa stated Claimant denied needing any assistance with eating, including needing her foods cut up. Ms. Testa stated she was very thorough in her questioning regarding dressing and Claimant denied needing any assistance.

Ms. Testa stated Claimant's son and daughter-in-law were in the same room during the assessment and she made a point of turning and asking Claimant's son at the end of the assessment if he had anything to add. Ms. Testa stated no one present contested the answers Claimant gave during the assessment.

Ms. Testa stated Claimant was alert and oriented and she had no reason to believe Claimant was confused about any of the questions asked of her. Ms. Testa stated she was aware that Claimant wore one hearing aid but cannot remember if she had to repeat anything to Claimant. Ms. Testa stated she normally speaks loudly at her assessments. Ms. Testa stated her assessments average forty-five to ninety minutes each, and Claimant's assessment lasted approximately fifty-five minutes.

- 6) Pertinent parts of the February 2011 PAS read (D-2):

Eating: When it comes to eating client states she can feed herself. Client notes she can cut up her meats and her vegetables. [REDACTED] daughter-in-law] will cook the food and carry it to her. Client denies having to have her foods cut up for her.

Dressing: When it comes to dressing client states she can put shirts on herself. She states she tries to do everything she can on her own. Client notes her homemaker helps her get her things ready for her bath and will get her clothes out for her. Homemaker does not help snap her bras. She notes she does this for herself. Client can put shoes and socks on herself. She states the homemaker does not help her with this. She also states she does not need any help with getting her pants on. Client notes the homemaker lays out her clothes only. I ask the client if she needed any help with getting dressed and she states she does not. She states the homemaker lays out her clothes for her.

- 7) 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 tool in order to qualify medically for the Aged/Disabled Waiver program. Claimant received four (4) deficits on her February 2011 medical evaluation.
- 2) Claimant denied needing assistance in eating and specifically denied needing her foods cut up for her to the WVMi nurse during her February 2011 assessment. Claimant also denied needing physical assistance in dressing. The WVMi nurse explored the area of dressing in great detail and Claimant was adamant that her homemaker prepared her clothes for her only and did not physically assist her in dressing.
- 3) The WVMi nurse reviewed the answers as given at the end of the assessment with Claimant, her son and daughter-in-law. The nurse noted there were no contradictions to the answers given by Claimant. Claimant testified that her son and daughter-in-law assisted her in dressing when the homemaker was not present, but her son and daughter-in-law did not bring this to the attention of the WVMi nurse during the assessment.

- 4) The matter before the Board of Review is whether or not the assessment completed by the WVMi nurse in February 2011 was accurate based on the information known at the time. While there were two (2) potential functional deficits contested in Claimant's appeal, eating and dressing, none of the disputed areas were contested in the two-week period following the Notice of Potential Denial. Witnesses testifying on behalf of Claimant agree that inaccurate information was provided to the WVMi nurse, yet nothing was done to correct the alleged inaccuracies during the assessment process. Claimant's diagnoses of arthritis and vertigo were taken into consideration when reviewing deficits in eating and dressing, however, ultimately it is the responsibility of Claimant and her representatives to provide accurate information at the time of the assessment, and not the responsibility of the Hearing Officer to reassess Claimant's functional abilities with new information that was not made available to the WVMi nurse. The WVMi nurse evaluated the area of eating and dressing appropriately and determined that the Claimant is not demonstrating functional deficits in those areas.
- 5) Whereas the Claimant demonstrates only four (4) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

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 2nd day of August 2011.

Kristi Logan
State Hearing Officer