



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

Rocco S. Fucillo
Cabinet Secretary

September 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 28, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your services under the Aged/Disabled Waiver program.

In arriving at a decision, the State Hearing 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 state that to be medically eligible for services, an individual must receive five deficits on the assessment tool known as the Pre-Admission Screening form (Aged/Disabled Home and Community Based Waiver Services Manual § 501.5.1).

The information submitted at your hearing revealed that you require physical assistance to transfer and should have been assessed as a level 3 in that area.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your Aged/Disabled Waiver services.

Sincerely,

Kristi Logan
State Hearing 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.: 12-BOR-1763

**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 for ----- held on August 28, 2012, by telephone conference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed June 19, 2012.

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 Aged/Disabled Waiver (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

Kay Ikerd, RN, Bureau of Senior Services
Courtenay Smith, RN, West Virginia Medical Institute

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 services under the Aged/Disabled Waiver program is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual §501.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual §501.5
- D-2 Pre-Admission Screening dated May 8, 2012
- D-3 Potential Denial Letter dated May 22, 2012
- D-4 Prescription Notepad Correspondence from -----, MD, dated June 19, 2012
- D-5 Termination Notice dated June 11, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on May 5, 2012. A Pre-Admission Screening (PAS) was completed that date by Courtenay Smith, RN with the West Virginia Medical Institute (WVMI)(D-2).

Claimant was awarded deficits in the areas of vacating a building, bathing, grooming, and dressing. One (1) additional deficit is required for Claimant to continue receiving ADW services (D-5).

- 2) The Department stipulated that based on the information provided during the assessment, Claimant should have been rated a level 2 in medication administration – prompting/supervision. However, a level 2 in medication administration does not constitute a deficit in that area (D-1 and D-2).
- 3) -----, Claimant's daughter, stated Claimant should have received a deficit for continence. ----- stated Claimant has urinary incontinence nightly and uses bed pads. -- ---- stated she was not present at the assessment, and felt that her father was embarrassed to admit to the incontinence and unknowingly hurting his eligibility for services. ----- stated Claimant uses two (2) prescription creams, hydrocortisone and

Nystatin, on his groin area due to inflammation caused by the nightly urinary incontinence.

----- stated her father has always used a wheelchair in the home during the mornings due to leg weakness and spinal cord injury. ----- noted several deteriorations in Claimant's condition since the assessment due to throat cancer. Claimant is fatigued from radiation treatments and has a burn area on his neck, of which she assists in applying cream to this area. ----- stated Claimant can now only eat soft foods, requires one- person assistance in walking, and total care in dressing.

- 4) Courtenay Smith, RN with WVMJ, testified to the findings of the May 2012 PAS for Claimant. Ms. Smith stated she was unaware of any urinary incontinence for Claimant as he had advised that he had not had any accidents in a year. Claimant had advised Ms. Smith that the hydrocortisone and Nystatin creams were applied to his groin area for chaffing. Ms. Smith pointed out that Claimant was assessed as occasional incontinence of urine the previous year, disputing the claim that he was embarrassed to relay this information to the assessing nurse.

Ms. Smith stated she was aware that Claimant required assistance if he fell, but Claimant indicated he did not fall on a regular basis. Ms. Smith observed Claimant transferring and walking with the use of assistive devices, without physical assistance.

- 5) Pertinent parts of the May 2012 PAS document (D-2):

Continence: Bowel/Bladder: Member has not had any urine accidents for 1 ½ years since starting the medication to treat his prostate. He has not has [sic] any bowel accidents in over a year.

Transferring: Member transfers himself by pushing up on the furniture and using his lift chair. He does not require hands-on assistance to transfer off the toilet, out of bed, or out of chairs. He states he cannot get up out of the floor when he falls without assistance but this is not part of his daily activities of transferring within the home.

Walking: Member walks in the home using his arm crutches at all times. He is very slow to walk and has frequent falls. He does not require hands-on assistance to walk.

Professional & Technical Care Needs: Member uses hydrocortisone cream and Nystatin cream on his groin area at night to prevent chafing in his groin area.

- 6) Aged/Disabled Waiver Policy Manual § 501.5.1.1 states (D-1):

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

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 May 2012 PAS in conjunction with his annual medical evaluation.
- 2) The matter before the Board of Review is whether or not the WVMi nurse correctly assessed Claimant based on Claimant's circumstances at the time of the medical evaluation and based on the information made known to her.
- 3) Claimant denied any instances of incontinence to the WVMi nurse. He was correctly assessed as continent based on this disclosure. A deficit is not awarded in this area.

- 4) Claimant denied the use of a wheelchair in the home at the evaluation. Claimant was assessed as a level 2 in walking – supervision/assistive device, and cannot be awarded a deficit for wheeling unless walking is a level 3 or higher. A deficit in wheeling is not awarded.
- 5) Testimony from Claimant's witness indicated he requires physical assistance in transferring from the floor after having fallen. The PAS documented Claimant is slow to transfer from a seated position and uses crutches full-time to walk. Although the WVMi nurse testified Claimant did not fall daily and therefore did not require regular, one-person assistance with transferring, the PAS acknowledged that Claimant had frequent falls (under the functional ability section – walking). Based on the documentation of Claimant's frequent falls and the need for physical assistance under those circumstances, Claimant should have been awarded a deficit in the area of transferring.
- 6) With the addition of a deficit in the area of transferring, Claimant continues to meet the medical criteria for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate Claimant's services under the Aged/Disabled Waiver program. One (1) additional deficit will be added to Claimant's May 2012 PAS for transferring.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th day of September 2012

**Kristi Logan
State Hearing Officer**