



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 18, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 13, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for 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 do not meet the medical criteria to receive Aged/Disabled Waiver services.

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

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1830**

**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 13, 2012 for -----, held 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 July 13, 2012.

**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

Teena Testa, 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 correctly denied Claimant for Aged/Disabled Waiver services.

**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 June 25, 2012
- D-3 Potential Denial Notice dated June 28, 2012
- D-4 Notice of Decision dated July 13, 2012

**VII. FINDINGS OF FACT:**

- 1) Claimant was evaluated for medical eligibility for the ADW program on June 25, 2012. A Pre-Admission Screening (PAS) was completed that date by Teena Testa, 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 was required for Claimant to receive ADW services (D-4).

- 2) -----, witness for Claimant, testified Claimant has trouble walking and uses a walker, and has a history of falls due to a loss of balance. She cannot get into the bathtub without assistance and can only lift her feet up a few inches.

----- stated Claimant cannot cook for herself or clean her home. ----- stated Claimant has nerve damage in her hands and if she drops her medications on the floor, she is unable to pick them up. ----- stated Claimant has no family to help her and she does household chores for Claimant.

- 3) Claimant testified she has anxiety and is confined to her apartment. She has no visitors or family members who can help her. Claimant stated she no longer uses the stove because she has burned her fingers in the past, and due to the nerve damage she will not realize she has injured herself until burn blisters form.
- 4) Pertinent parts of the June 2012 PAS document (D-2):

Eating: She is able to feed self once the meal has been prepared. Client states she can take a fork and knife and cut up her meats and vegetables. She states she does not cook and states she is afraid she may boil water over on herself and not know this. Who prepares the meals in the home: the client states she prepares her meals herself. She also has meals on wheels coming in.

Transferring: in and out of bed/chair: client states she sleeps in her bed and her recliner. Client stated she can get herself in and out of the bed. Raised or standard toilet: she notes they put in a standard commode. She notes she does have handle bars on her commode she uses.

Walking: assistive device used: walker. Observation of ambulation: client was sitting in her recliner chair. She scooted herself to the edge of the chair and pushed herself upward using the chair arms. She does walk with bent over posture and slow gait. She walked to the bathroom door and turned around and walked back.

5) Aged/Disabled Waiver Policy Manual § 501.5.1.1 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

## **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 June 2012 PAS.
- 2) Claimant has the ability to feed herself as documented in the PAS. To receive a deficit in eating, Claimant would have to be unable to obtain nourishment without physical assistance. Meal preparation is not considered when evaluating this area. A deficit cannot be awarded in the area of eating.
- 3) Testimony indicated Claimant uses a walker to ambulate. To receive a deficit in the area of walking, hands-on physical assistance is required to complete this functional ability. Claimant was correctly assessed as a level 2 – supervision/assistive - device in the area of walking. A deficit cannot be awarded in this area.
- 4) The PAS documents Claimant was able to rise from a seated position by holding onto furniture, and uses raise bars in the bathroom. In order to receive a deficit in transferring, hands-on physical assistance is required to complete this functional ability. Claimant was correctly assessed as a level 2 – supervision/assistive device - in transferring. A deficit cannot be awarded in this area.
- 5) No additional deficits can be awarded to the June 2012 PAS. Claimant does not meet the medical criteria for Aged/Disabled Waiver services.

## **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant eligibility for 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 18<sup>th</sup> day of September 2012.**

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