



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 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 31, 2012. 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 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 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 § 501.5).

The information submitted at your hearing revealed that you no longer meet the medical criteria to continue receiving Aged/Disabled Waiver services.

It is the decision of the State Hearing Officer to **Uphold** 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.: 11-BOR-2546

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 31, 2012 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 December 2, 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

-----, Witness for Claimant

-----, Witness for Claimant

Kay Ikerd, RN, 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.

This hearing was held by videoconference.

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 §501.5

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 November 7, 2011
- D-3 Pre-Admission Screening dated November 23, 2010
- D-4 Potential Denial Letter dated November 14, 2011
- D-5 Notice of Decision dated December 1, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on November 7, 2011. 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 in an emergency, grooming, and dressing. Two (2) additional deficits were required for Claimant to continue receiving ADW services (D-5).

- 2) Claimant testified she needs assistance with her medications. Claimant stated she forgets if she has taken her medications and sometimes will take double doses. Claimant stated she is forgetful and has no concentration. She attributes this to a stroke several years ago.

Claimant stated she has a urinary tract infection that causes her to vacate her bladder before making to the bathroom. Claimant stated she wears pads due to bladder leakage. Her bowels are impacted and she only has a bowel movement every 7-8 days. The impacted bowels cause pain in her side and she may have to have surgery to correct.

Claimant stated she recently fell in a parking lot and hurt her shoulder, knees and cracked a rib. Claimant stated her blood sugar is too high for her to have any surgery at this time. Claimant stated she uses a cane in the home to walk. Claimant stated she is not capable of doing much of anything and needs help.

- 3) -----, Claimant's son testified his mother is disoriented and confused. -----
- stated Claimant needs assistance getting up if she has fallen down.
- 4) Teena Testa, RN with WVMi testified to the PAS she completed for Claimant in November 2011. Claimant denied needing reminders to take her medications and advised that her bladder accidents are seldom. Claimant was oriented to person, place and time.

Ms. Testa noted Claimant received deficits in bathing and bladder incontinence on the previous year's PAS that were not awarded this year (D-3).

- 5) Pertinent parts of the November 2011 PAS read (D-2):

Continence: Client notes she does have accidents on herself with her bladder. She notes it is very seldom. On the average she would have an accident 3x per month per the client.

Orientation: Client notes her name is Wanda Sue Gilley. Client aware of her address and her telephone number. Client aware of her date of birth. Client notes this is November 2011. Client notes it is afternoon.
President – Obama

Walking: Client was sitting in her wheelchair. I did ask the client to show me how she walks in the home. She stood up from her wheelchair and limped to the doorway and back. She did not use any medical devices. She notes was told she needed to use her walker instead of her cane. She walked to the door and back.

Medication Administration: Client states she is able to get her meds and administer to herself. She denies needing to be reminded to take her meds.

- 6) 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 three (3) deficits on her November 2011 PAS in conjunction with her annual medical evaluation.
- 2) Claimant is able to administer her own medications. Reminders of when to take medication do not constitute a deficit in medication administration. No additional deficits can be awarded in this area.
- 3) Claimant uses a cane or walker to assist her with walking. She was correctly rated a Level 2 in walking for the use of an assistive device. To receive a deficit in walking,

Claimant would have to require physical assistance from another person to walk. No additional deficits can be awarded in this area.

- 4) Claimant advised the WVMi nurse that she had bladder accidents three (3) times a month. Criteria stipulate an individual must have incontinence more than three (3) times a week to receive a deficit. The WVMi nurse correctly assessed Claimant as occasional bladder incontinence based on the information provided during the medical assessment.
- 5) Claimant no longer meets the medical criteria to continue receiving Aged/Disabled Waiver services.

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 10th day of February 2012

**Kristi Logan
State Hearing Officer**