



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

September 4, 2009

-----  
-----  
-----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 2009. 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 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 you have incontinence of the bladder, giving you five (5) deficits on your medical assessment. You meet the medical criteria to continue receiving Aged/Disabled Waiver services.

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

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Board of Review  
Bureau of Senior Services  
Coordinating Council for Independent Living  
West Virginia Medical Institute

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1446**

**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 August 25, 2009 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 August 25, 2009 on a timely appeal, filed May 29, 2009.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have been continued pending a decision.

**II. PROGRAM PURPOSE:**

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & 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

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.

All participants testified by phone.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether or not the Department's proposal to terminate  
Claimant's Aged/Disabled Waiver services was 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 Form (PAS) dated May 11, 2009
- D-3 Potential Denial Letter dated May 18, 2009
- D-4 Denial Letter dated June 3, 2009

**Claimants' Exhibits:**

- C-1 Correspondence from Dr. [REDACTED] dated June 12, 2009

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for the Aged/Disabled Waiver program on May 11, 2009. Teena Testa, RN with the West Virginia Medical Institute (WVMI) completed a Pre-Admission Screening Form (PAS) that date. Claimant was awarded deficits in eating, bathing, grooming and dressing (D-2 and D-4).

One (1) additional deficit was required for Claimant to continue receiving Aged/Disabled Waiver services.

- 2) -----, Claimant's case manager with Coordinating Council for Independent Living, stated they were contesting Claimant not receiving a deficit for bladder incontinence. Ms. [REDACTED] submitted a diagnosis of incontinence for Claimant given by Dr. [REDACTED] on June 12, 2009 (C-1). Ms. [REDACTED] stated they had difficulty getting Dr. [REDACTED] to respond to their request for verification of Claimant's incontinence.

Ms. [REDACTED] stated Claimant cannot make it to the bathroom in time before she has an accident. She urinates in her sleep which wakes her up in the middle of the night. Claimant also has accidents during the daytime. She wears pads at home as well as when she goes out.

- 3) -----, Claimant's homemaker, testified to Claimant's bladder incontinence. Although Ms. [REDACTED] has only been Claimant's homemaker since June 2009, she has known her personally for several years and stated she has been using incontinent supplies for some time.
- 4) Claimant testified that she is hard of hearing. She had a hard time hearing Ms. Testa during the assessment. She advised her case manager at that time (who is no longer with her case management agency) that she did not understand everything that was said during the assessment. It was her understanding that the case manager would speak to the nurse about the assessment.

Claimant stated she has been incontinent long before the assessment. She stated she will even have accidents while sitting in her chair and must change her clothes daily.

- 5) Teena Testa testified to the assessment she completed in May 2009. Ms. Testa asked Claimant if she ever "peed" on herself. Claimant's homemaker at that time advised her of occasional bowel incontinence but made no mention of bladder incontinence. Ms. Testa realized Claimant was hard of hearing but she appeared to understand the questions she was being asked. There was no mention of Claimant's use of pads for the incontinence at 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

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

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. Claimant was awarded four (4) deficits on her May 2009 medical evaluation.
- 2) Claimant has an eligible diagnosis of urinary incontinence from her physician. Although this diagnosis was not presented until after the assessment, credible testimony indicates Claimant has been incontinent since before the day of the assessment. A deficit for incontinence will be awarded Claimant.
- 3) Claimant continues to meet the medical criteria to receive Aged/Disabled Waiver services.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate Claimant's Aged/Disabled Waiver services. Claimant will be awarded a deficit in bladder incontinence.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 4<sup>th</sup> day of September 2009.**

---

**Kristi Logan  
State Hearing Officer**