



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

October 14, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 7, 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 are incontinent of the bladder and therefore continue to meet the medical criteria required for the Aged/Disabled Waiver program.

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
West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 09-BOR-1491

**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 October 7, 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 October 7, 2009 on a timely appeal, filed June 19, 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

-----, Homemaker

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)

Karen Keaton, 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. 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 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 Form dated May 27, 2009
- D-3 Potential Termination Notification Letter dated May 29, 2009
- D-4 Termination Letter dated June 15, 2009

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the ADW program on May 27, 2009. A Pre-Admission Screening (PAS) form was completed that date by Karen Keaton, RN with the West Virginia Medical Institute (WVMI).

Claimant received deficits in eating, bathing, grooming and dressing. One (1) additional deficit was required for Claimant to continue receiving ADW services (D-2).

- 2) Claimant contested not receiving a deficit in the area of bladder incontinence. Claimant stated she has bladder accidents at least three (3) times a week. She stated she cannot make it to the bathroom in time and "dribbles" on the way there. Claimant stated she has been incontinent for years.

Claimant testified she is embarrassed to admit that she is incontinent and denied having bladder accidents when questioned by the nurse at the assessment. She has hid her incontinence from everyone, even her children.

- 3) Claimant's homemaker, -----, started working for Claimant in August 2009. While ----- was not employed for Claimant in May 2009 when the PAS was completed, she gave

testimony to Claimant's embarrassment regarding her incontinence. -----stated when she first started working for Claimant; she would find urine in the bathroom floor and soiled underwear. -----asked Claimant if she was having accidents and Claimant denied it, despite the evidence. Eventually Claimant confided to -----that she was incontinent, but only after she had known her for several weeks.

- 4) Karen Keaton, RN with WVMi testified to the PAS she completed for Claimant in May 2009. Ms. Keaton stated Claimant denied having any leakage or accidents at the assessment. Claimant's former homemaker who was present at the assessment offered no contradictory statements. Ms. Keaton noted on the PAS Claimant's use of a bedside commode in May 2009.
- 5) 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 provided credible testimony that she is embarrassed to acknowledge her bladder incontinence to others although she has been incontinent for years. Her homemaker also offered credibility to Claimant's reluctance to admit her accidents. The documentation on the PAS regarding Claimant's use of a bedside commode supports her claim that she is unable to make it to the bathroom without having an accident.
- 3) Claimant will be awarded an additional deficit for bladder incontinence for a total of five (5) deficits. Claimant continues to meet the medical criteria for ADW 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 one (1) additional deficit for bladder incontinence.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 15th day of October 2009.

**Kristi Logan
State Hearing Officer**