



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

Martha Yeager Walker
Secretary

June 18, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 9, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your services through the Aged/Disabled Waiver program.

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. Some of these regulations state 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. Individuals must have five (5) deficits on the PAS to qualify for services (Aged/Disabled Home and Community Based Waiver Services Manual § 501.3).

The information submitted at your hearing revealed that you no longer meet the medical criteria required to remain eligible for services under the Aged/Disabled Waiver program.

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

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
Aging & Family Services of [REDACTED]

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

-----,

Claimant,

v.

Action Number: 09-BOR-930

**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 June 9, 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 June 9, 2009 on a timely appeal, filed March 16, 2009.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver (ADW) is set up cooperatively between the Federal and State governments and 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 RN

-----, Case Manager
-----, Homemaker

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

All participants testified by phone.

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether or not the Department's decision to terminate Claimant's Aged/Disabled Waiver services is correct.

V. APPLICABLE POLICY:

Aged/Disabled Waiver Policy Manual §501.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Policy Manual §501.3
- D-2 Pre-Admission Screening Form dated February 13, 2009
- D-3 Potential Denial Letter dated February 19, 2009
- D-4 Termination Letter dated March 6, 2009

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant had her annual reevaluation to determine medical eligibility for the ADW program on February 13, 2009. A Pre-Admission Screening (PAS) form was completed that date by -----, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in grooming, dressing and continence. Two (2) additional deficits were required for Claimant to continue receiving ADW services (D-2).

- 2) -----, Claimant's homemaker RN, testified that they were contesting Claimant not receiving deficits in the areas of vacating in an emergency, bathing and transferring. Claimant requires assistance with bathing due to her problems with her right shoulder. She cannot raise her right arm above her shoulder to bathe herself independently.

Claimant also has peripheral neuropathy giving her tunnel vision. This causes her balance to be off resulting in frequent falls. Claimant fell in January 2009 and fractured her rib. She has been asking her doctor for a walker for some time now.

- 3) -----, Claimant's homemaker, testified that Claimant is unbalanced and has trouble getting up. She has been trying to get a walker to help with transferring. -----felt like Claimant would be unable to vacate in an emergency because she moves so slow.
- 4) -----, Claimant's case manager, testified that Claimant tried to appear more independent than she really was to the nurse during the assessment. The nurse had never met Claimant before and therefore could not assess her properly without an understanding of Claimant's medical history.
- 5) Claimant testified that she was confused by some of the questions the nurse asked during the assessment. She used big words and phrases and Claimant was not given enough time to think before she answered. Claimant stated her right shoulder freezes. Her homemaker must help her bathe as she can only use one arm.

-----also helps Claimant with transferring and walking. She is unstable and has a fear of falling. If she falls, she cannot get up on her own. The day of the assessment was a good day for walking. At any time, her knees could give out and she would fall. She could not evacuate in an emergency because she walks slow.

- 6) ----- testified that Claimant denied not being able to evacuate in an emergency when asked at the assessment. ----- denied using any technical terms that Claimant may not have understood. She asked Claimant if she would be able to "get out" if there was an emergency. ----- stated Claimant did not appear to be confused at any time during the assessment. Claimant did not indicate she fell frequently and she observed Claimant to walk and transfer independently that day.

Claimant was able to lift her arm and legs, reach her left arm behind her head and reach her calves. Claimant told ----- that she could bathe herself using a scrubber and could get in and out of the tub on her own. Claimant gave conflicting testimony regarding dressing and grooming but ----- awarded Claimant deficits in those areas regardless.

- 7) 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/her 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 three (3) deficits on her February 2009 medical evaluation.
- 2) Credible testimony and documentation from the assessing nurse indicate that Claimant is able to bathe herself without assistance. Deficits are awarded based on the need for assistance with daily activities and not assistance that may be given as a courtesy.
- 3) The PAS evaluates an individual's current medical condition. Claimant was observed walking and transferring independently the day of the assessment. Testimony provided indicated Claimant was correctly assessed in the areas of walking and transferring.
- 4) Claimant no longer meets the medical criteria required to be eligible for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision 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 18th Day of June, 2009.

Kristi Logan
State Hearing Officer