



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

October 26, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 18, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny services under 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. 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 do not meet the medical criteria required by policy to receive services under the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny participation in the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearings 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-1646

**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 18, 2011 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 July 6, 2011.

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
-----, Witness for Claimant

Sara Birkhead, Bureau of Senior Services (testified by phone)
Brenda Myers, 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. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's decision to deny Claimant 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 dated May 17, 2011
- D-3 Potential Denial Letter dated May 26, 2011
- D-4 Denial Letter dated June 14, 2011

Claimants' Exhibits:

- C-1 Prescription Pad Note dated June 7, 2011 from [REDACTED] DO

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the ADW program on May 17, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of vacating in an emergency, grooming and dressing (D-2). Two (2) additional deficits were required for Claimant to be eligible for ADW services.

- 2) -----, Claimant's mother, testified that Claimant has had an increase in mental confusion and has depression. -----stated Claimant has paralysis in his left hand, making it difficult to dress himself. She stated Claimant has problems walking and frequently falls. -----testified that her son forgets to take his medications or will sometimes take double dosages, having forgotten that he had already taken them.

-----stated Claimant is unable to take care of his household chores such as doing his laundry, taking out the trash and cooking.

- 3) -----, Claimant's father, stated he helps Claimant as much as he can but due to a decline in his own health, has been unable to do so as often. ----- stated Claimant has missed doctors' appointments when he has been unable to drive him. ----- stated Claimant will forget that he is cooking something on the stove and leave it to burn. Claimant has a seizure disorder and ----- stated someone is always in Claimant's home when he showers in case he has a seizure while bathing. ----- has noticed a decline in Claimant's health in a short span of time.
- 4) -----, Claimant's aunt, testified that she checks on Claimant as often as she can. ----- stated Claimant fell in his home when he was alone and was unable to get up on his own. ----- stated Claimant did not have his phone with him and was on the floor for hours as a result.
- 5) A note written on a prescription pad by Claimant's physician, [REDACTED] DO dated June 7, 2011 was submitted which reads (C-1):

Patient is unable to perform most ADLs [activities of daily living]/needs assistance with cleaning, dressing, showering

- 6) Brenda Myers, RN with WVMi testified to the PAS she completed for Claimant in May 2011. Ms. Myers stated Claimant advised her that he was able to feed and bathe himself and administer his own medications. Ms. Myers stated Claimant was oriented during the assessment, but reported experiencing confusion after a seizure. Ms. Myers stated she was advised that Claimant lived alone with family members checking on him every few days. She noted those present during the assessment were in agreement with the answers given by Claimant.
- 7) 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 tool in order to qualify medically for the Aged/Disabled Waiver program. Claimant received three (3) deficits on his May 2011 PAS.
- 2) To receive a deficit in the area of eating, Claimant would require physical assistance to receive nourishment. Meal preparation is not considered in evaluating a deficit in eating.
- 3) Claimant advised the WVMi nurse that he was able to bathe himself, although testimony indicated someone was usually in his home when he showered in case of a fall. Claimant does not receive physical assistance in bathing and supervision alone does not qualify as a deficit in this area.
- 4) Testimony indicated that Claimant requires reminders to take his medications appropriately. However, Claimant is able to physically administer his own medications and prompting and/or supervision is not a deficit in medication administration.
- 5) Claimant has intermittent disorientation after the onset of a seizure. In order to receive a deficit in the area of orientation, an individual must be totally disoriented and completely unaware of his surroundings.
- 6) Claimant failed to meet the medical criteria required to receive 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 services under the Aged/Disabled Waiver program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th day of October 2011.

Kristi Logan
State Hearing Officer