



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

January 4, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 7, 2010. 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 urinary incontinence and continue to meet the medical criteria for 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: Chairman, Board of Review
Bureau of Senior Services
[REDACTED]
West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 10-BOR-1685

**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, 2010 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.

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
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. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to terminate Claimant's Aged/Disabled Wavier 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 June 3, 2010
- D-3 Potential Denial Letter dated June 7, 2010
- D-4 Diagnosis from [REDACTED] DO
- D-5 Termination Letter dated July 6, 2010

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver (ADW) program on June 3, 2010. A Pre-Admission Screening (PAS) form was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of vacating, bathing, grooming and dressing (D-2). One (1) additional deficit was required for Claimant to continue received ADW services.

- 2) Claimant testified that she contested not receiving a deficit in the area of urinary continence. Claimant stated the assessing nurse asked her how many bladder accidents she had each day. Claimant stated she has accidents daily, and answered Ms. Testa by saying she had 1-2. Claimant stated she has a neurogenic bladder, as diagnosed by [REDACTED] DO on June 21, 2010 (D-4).

Claimant stated the PAS indicated that she only had accidents "a couple of times a week" (D-2). Claimant stated Ms. Testa may have meant to ask her how many times a week she had accidents but was adamant that Ms. Testa asked her how times daily she experienced accidents.

- 3) Teena Testa, assessing nurse with WVMI, testified that she questioned Claimant about how many times in one (1) week she had urinary incontinence. Ms. Testa denied asking Claimant how times in one (1) day she had incontinence. Ms. Testa stated she reviewed the PAS with Claimant at the end of the assessment and Claimant was in agreement with the PAS.

Ms. Testa stated she received the diagnosis of neurogenic bladder from Claimant's physician but did not change the initial PAS as it did not specifically state that Claimant was incontinent (D-4).

- 4) -----, Claimant's homemaker, testified that Claimant will have 3-4 accidents in a 24 hour period. ----- stated Claimant is unable to get up at night to use the bathroom and often has accidents. ----- stated she washes Claimant's sheets and ----- can attest to the frequency of Claimant's bladder accidents.

- 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 June 2010 medical evaluation.
- 2) Claimant was diagnosed with a neurogenic bladder treatment by her physician on June 21, 2010. Neurogenic bladder is a urinary problem in which the bladder does not empty properly due to a neurological condition. Symptoms can include an overactive or underactive bladder, depending on the specific neurological condition. Claimant also takes Detrol, a medication for bladder conditions (D-2).
- 3) Based on the testimony of Claimant's homemaker and the documentation regarding Claimant's bladder condition, it is reasonable that Claimant experiences urinary incontinence daily and may have misunderstood the question asked by the assessing nurse.
- 4) Claimant is found to have urinary incontinence and will have a deficit awarded in this area. Claimant continues to meet the medical criteria for the Aged/Disabled Waiver program.

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 continence.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th day of January 2011

**Kristi Logan
State Hearing Officer
Member, Board of Review**