



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

November 4, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 25, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny you services under the Aged/Disabled Waiver program.

In arriving at a decision, the State Hearing 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 found in policy to receive Aged/Disabled Waiver services.

It is the decision of the State Hearing Officer to **Uphold** the action of the Department to deny eligibility for 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-1817

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 25, 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 21, 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

Kay Ikerd, RN, Bureau of Senior Services
Karen Keaton, 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 decision to deny Aged/Disabled Waiver services for Claimant.

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 June 24, 2011
- D-3 Potential Denial Letter dated June 27, 2011
- D-4 Denial Letter dated July 12, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the ADW program on June 24, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Karen Keaton, RN with the West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of grooming and continence (D-2). Three (3) additional deficits were required for Claimant to be eligible for ADW services.

- 2) Claimant testified that she cannot see due to cataracts in both eyes and her vision has worsened in the last few months. She stated she cannot differentiate between one medication and another to know which one to take. Claimant stated she no longer uses a pill reminder, but places her pills in cups to take. Claimant testified that she now uses a Clonidin patch and is unable to see well enough to open the package and put it on. Claimant stated a neighbor assists her with the Clonidin patch. She stated she is no longer able to administer her eye drops.

Claimant stated she sits on a stool in the shower, but denied having anyone who could help her bathe. Claimant stated sometimes she uses the sink to sponge off instead. Claimant testified that she is able to dress herself by feel only and cannot see the button holes or bra strap hooks.

Claimant stated she cannot see the dials on the stove or washing machine or the numbers on the remote control for the television. Claimant stated nothing more can be done to correct her vision and it is only getting worse.

Claimant stated she relies on the assistance of her neighbors to help her with things she cannot handle herself. Claimant stated she is 94 years old and manages the best she can.

- 3) 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 two (2) deficits on her June 2011 PAS.
- 2) During the time of the assessment in June 2011, Claimant was able to administer her own medications. Testimony from Claimant indicated she was not on the Clonidin patch in June 2011 and a drastic decrease in her vision no longer allows her to see which medications to take. The WVMI nurse correctly evaluated Claimant as being able to administer her own medications based on the information that was provided at that time.
- 3) Claimant is able to bathe herself without assistance from another individual. In order to receive a deficit in bathing, Claimant would need supervision or physical assistance from another person.
- 4) Testimony from Claimant held that her vision has worsened and she is no longer able to perform the activities she had previously been able to when the WVMI nurse completed the assessment. However, based on Claimant's medical condition in June 2011, she did not 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 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 4th day of November 2011.

Kristi Logan
State Hearing Officer