



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 7, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 28, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny 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 do not meet the medical criteria required to receive Aged/Disabled Waiver services.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny you services under 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-1904

**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 28, 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 August 30, 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

Kay Ikerd, RN, Bureau of Senior Services
Teena Testa, RN, West Virginia Medical Institute
Anna Macme, RN, West Virginia Medical Institute (observing)

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 Claimant services under the Aged/Disabled Waiver program 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 July 21, 2011
- D-3 Potential Denial Letter dated July 25, 2011
- D-4 Denial Letter dated August 15, 2011

Claimants' Exhibits:

- C-1 Correspondence from Harold Cofer Jr., MD dated August 17, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the ADW program on July 21, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI).

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

- 2) -----, Claimant's wife, testified that Claimant's health has deteriorated since the July 2011 assessment. -----stated Claimant has been in the intensive care unit at the hospital since then. She stated Claimant must now wear his knee braces in the home, which he cannot put on by himself. -----stated he needs assistance getting up from a seated

position once the leg braces are on. -----admitted Claimant was not wearing the knee braces full time in July 2011. -----testified Claimant walks with a cane. Claimant is supposed to be on continuous oxygen, but they have been unable to take him to the doctor to get the treatments started.

-----testified Claimant suffers from vertigo and has frequent falls as a result. She stated due to his poor vision, Claimant cannot get his medications out of the bottles.

-----referenced a letter from Claimant's physician, [REDACTED] MD dated August 17, 2011 which reads (C-1):

This letter is to verify that the above individual has been followed within the [REDACTED] for management of several medical problems to include hypertension, advanced generalized osteoarthritis with subsequent weakness in both knees, coronary insufficiency, and advanced end stage emphysema with chronic bronchospasm. His global prognosis is poor. Therefore, [Claimant] remains permanently disabled for all activities in my medical opinion within a reasonable degree of medical certainty.

- 3) Claimant testified that he is now seeing a cardiologist and at this time, sees three (3) different physicians.
- 4) Teena Testa, RN with WVMJ testified to the PAS she completed for Claimant in July 2011. Ms. Testa stated when she evaluated Claimant in July 2011, he was only wearing his knee braces outside of the home. Ms. Testa stated she can only consider an individual's functionality inside the home. Ms. Testa stated she was advised that Claimant was able to administer his own medications, needing only reminders of when to take them.
- 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 tool in order to qualify medically for the Aged/Disabled Waiver program. Claimant received four (4) deficits on his July 2011 PAS.
- 2) Claimant was able to physically administer his own medications when he was medically evaluated in July 2011. Although testimony indicated Claimant needed assistance with getting the medications out of the bottles and needed reminders of when to take them, prompting and supervision is not considered a deficit in medication administration. No additional deficit can be awarded in this area.
- 3) Claimant advised the WVMI nurse during the assessment that he did not wear his leg braces outside of the home. While Claimant has had a decline in his health and now wears the leg braces inside of the home, Claimant was correctly evaluated by the WVMI nurse based on the information known to her at that time. No additional deficits can be awarded in transferring or walking.
- 4) Claimant does 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 Aged/Disabled Waiver services for Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th day of November 2011.

Kristi Logan
State Hearing Officer