



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

----- J. Lewis, M.D., Ph.D.  
Cabinet Secretary

December 13, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 8, 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 § 501.5).

The information submitted at your hearing revealed that you do not meet the medical criteria to receive Aged/Disabled Waiver services.

It is the decision of the State Hearing Officer to **Uphold** the action of the Department to deny Aged/Disabled Waiver services.

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-2255**

**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 December 8, 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 October 13, 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  
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 decision to deny Claimant services under the Aged/Disabled Waiver program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Waiver Policy Manual §501.5.1

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual §501.5.1
- D-2 Pre-Admission Screening dated August 30, 2011
- D-3 Potential Denial Letter dated August 31, 2011
- D-4 Denial Letter dated September 15, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant was evaluated for medical eligibility for the ADW program on August 30, 2011. A Pre-Admission Screening (PAS) was completed that date by Teena Testa, RN with the West Virginia Medical Institute (D-2).

Claimant was awarded deficits in the areas of vacating in an emergency, bathing and grooming. Two (2) additional deficits were required for Claimant to be medically eligible for ADW services (D-4).

- 2) Claimant testified he has decubitus ulcers on both of his legs now due to his prosthetic legs not fitting correctly. Claimant stated he has poor vision, with use of only one (1) eye and cataracts in the other. Claimant stated he cannot read and is no longer able to drive.

Claimant stated he no longer has the ability to feel when his blood sugar is getting low and will suddenly pass out. Claimant stated when his blood sugar drops like this, he is unconscious and his wife must administer medication to revive him. Claimant stated this occurs at least once a week.

- 3) Teena Testa, RN with WVMI testified to the PAS she completed for Claimant in August 2011. Ms. Testa stated at the time of the assessment, Claimant had only one (1) decubitus ulcer, on his left leg. Ms. Testa stated she rated the ulcer as stage 2 decubitus

based on Claimant's description that it was blister-like in appearance and healing. Ms. Testa stated a stage 3 decubitus ulcer is an open sore with tissue missing and a stage 4 decubitus ulcer is open to the bone.

Ms. Testa stated Claimant was oriented to person, place and time during the assessment and denied episodes of disorientation except when his blood sugar dropped. Ms. Testa stated since Claimant is able to administer his medications the majority of the time, she did not give a deficit for medication administration.

4) Aged/Disabled Waiver Policy Manual § 501.5.1.1 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

**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 August 2011 PAS.
- 2) Policy does not allow for a deficit for impaired and uncorrectable vision or a deficit for intermittent disorientation. No additional deficits can be awarded in these areas.
- 3) Based on the testimony and documentation in the PAS, Claimant is unable at times to administer his own medications. Claimant should have been awarded a deficit in medication administration. However, Claimant still requires one (1) more deficit in order to qualify medically for the Aged/Disabled Waiver program so this is a moot point.

**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 13<sup>th</sup> day of December 2011.**

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**Kristi Logan  
State Hearing Officer**