



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

June 8, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 31, 2012. 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 is based on current policy and regulations. These regulations state that to be medically eligible for services, an individual must receive five deficits on the assessment tool known as the Pre-Admission Screening form (Aged/Disabled Home and Community Based Waiver Services Manual § 501.5.1).

The information submitted at your hearing revealed that you should have been awarded a deficit for vacating in an emergency, thereby giving you five (5) deficits.

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

Sincerely,

Kristi Logan
State Hearing 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.: 12-BOR-1050

**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 for ----- held on May 31, 2012. 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 March 22, 2012.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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
Connie Sankoff, RN, West Virginia 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 denial of Aged/Disabled Waiver services for Claimant was correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual §501.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual §501.5
- D-2 Pre-Admission Screening dated December 22, 2011
- D-3 Potential Denial Letter dated December 29, 2011
- D-4 Notice of Decision dated January 13, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the ADW program on December 22, 2011. A Pre-Admission Screening (PAS) was completed that date by Connie Sankoff, RN with the West Virginia Medical Institute (WVMI)(D-2).

Claimant was awarded deficits in the areas of bathing, grooming, dressing and continence. One (1) additional deficit was required for Claimant to receive ADW services (D-4).

- 2) -----, Claimant's daughter-in-law, stated they were contesting Claimant not receiving deficits in the areas of vacating in an emergency and medication administration. ----- testified Claimant takes medications that make her sleepy and she may not be able to recognize the need to vacate her home in an emergency situation.

----- stated Claimant cannot remember when to take her medications or if she has already taken her medications, sometimes double-dosing. Claimant needs reminders of when to take her medications and the correct dosage.

- 3) -----, witness for Claimant, stated they were not contesting Claimant's physical ability to vacate in an emergency, rather her mental ability to vacate. Claimant has a diagnosis of dementia and is alone in the house all day while her husband and son work. ----- stated Claimant would be unable to vacate in an emergency due to the dementia.
- 4) Connie Sankoff, nurse reviewer with WVMI, testified to the PAS she completed in December 2011 for Claimant. Ms. Sankoff stated Claimant was able to physically

administer her own medications, meaning she could pick up a pill and place it in her mouth. Claimant required reminders of when to take her medications and was rated as prompting/supervision for medication administration. Prompting and/or supervision does not constitute a deficit.

Ms. Sankoff stated Claimant answered questions appropriately during the December 2011 assessment and showed no signs of mental confusion. Ms. Sankoff stated she had no reason to believe Claimant would be mentally unable to vacate in the event of an emergency. While a diagnosis of dementia was noted, Ms. Sankoff stated Claimant was not prescribed medications to treat the dementia in December 2011.

5) Pertinent parts of the December 29, 2011 PAS read (D-2):

Vacating: The client has severe back pain, and cannot move her legs quickly, but was able [to] move about the home, from room to room, gathering her prescription bottles, using the restroom, and picking up a soiled diaper from the living room floor (as ----- changed ----- diaper on the floor), taking it to the refuse container in the next room. She demonstrated the ability to rise from the sofa, and independently follow me out the back door, and down the multiple levels of their back deck, to speak with me about pain management. She is physically able to independently vacate, in the event of an emergency, and would also require supervision/someone confirming that she vacated safely, due to her back pain.

Orientation: Client did not know the date, but knew her address and location, as well as her name.

Medication Administration: The client takes too much of her medication, and forgets if she has taken them. She forgets her Welbutrin, and cannot recall if she has taken her blood thinners. She just received a pill reminder box, and plans to use it soon.

6) 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 four (4) deficits on her December 2011 PAS.
- 2) Claimant has the physical ability to administer her own medications. Although she may require reminders of when to take her medications, this qualifies under the area of prompting/supervision, which does not qualify as a deficit.
- 3) Testimony indicated Claimant does not have the mental ability to recognize the need to vacate the home in an emergency due to medications and a diagnosis of dementia. The PAS documents Claimant's physical ability was fully explored, but no mention of her mental ability. Not only does Claimant have a diagnosis of dementia from a physician, but she was rated a level 2 in orientation – intermittent disorientation. Claimant's mental ability to vacate in an emergency was not addressed during the assessment and credible testimony holds that she would be unable to do so. One (1) additional deficit in the area of vacating in an emergency will be awarded.
- 4) Claimant meets the medical criteria required to receive Aged/Disabled Waiver services.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny Claimant Aged/Disabled Waiver services. One (1) additional deficit in the area of vacating in an emergency will be added to Claimant's December 2011 PAS.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th day of June 2012

Kristi Logan
State Hearing Officer