



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 10, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 6, 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 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 § 501.3).

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 Hearing Officer to **Uphold** the action of the Department to deny you services under the Aged/Disabled Waiver program.

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.: 11-BOR-1946**

**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 January 6, 2012 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 September 6, 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

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 Claimant Aged/Disabled Waiver services 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 May 26, 2011
- D-3 Potential Denial Letter dated May 31, 2011
- D-4 Notice of Decision dated June 15, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant was evaluated for medical eligibility for the ADW program on May 26, 2011. A Pre-Admission Screening (PAS) was completed that date by Karen Keaton, RN with the West Virginia Medical Institute (WVMI)(D-2).

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

- 2) -----, friend of Claimant's, testified that Claimant's condition has worsened since the May 2011 medical evaluation. ----- stated Claimant now needs assistance to vacate her home. ----- stated she must hold onto Claimant when they are out of the home. ----- stated Claimant is no longer able to drive and cannot cook or clean for herself. ----- runs errands for Claimant and assists her with bathing and dressing.
- 3) Claimant testified that she is unable to care for herself. Claimant stated she has a torn rotator cuff, osteoarthritis, a dropped bladder and recently broke a rib by simply bending over.

- 4) Karen Keaton, RN with WVMi testified to the PAS she completed for Claimant in May 2011. Ms. Keaton stated Claimant denied needing physical assistance to vacate in an emergency. Ms. Keaton stated Claimant has approximately thirty (30) steps leading up to her apartment and Ms. Keaton questioned Claimant's ability to vacate independently during the assessment. Claimant advised Ms. Keaton that she could navigate the steps holding onto the handrail. Ms. Keaton stated in May 2011, Claimant was still able to drive short distances, attesting to the decline in her condition since the assessment.
- 5) 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 her May 2011 PAS.
- 2) Testimony indicated Claimant was able to vacate with supervision at the time of the assessment. Although testimony revealed Claimant has had a decline in her health condition, the WVMi nurse must evaluate Claimant's functional abilities at the time of the assessment. Claimant was correctly assessed as able to vacate without physical assistance based on the information made known to the WVMi nurse at the time.
- 3) The WVMi nurse evaluated Claimant's functional abilities in the home. Claimant's need for physical assistance with walking outside of her home cannot be considered. Additionally, meal preparation is not considered a deficit for eating. The information provided during the assessment held Claimant was able to feed herself and no deficit can be awarded in the area of eating.
- 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 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 10<sup>th</sup> day of January 2012**

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**Kristi Logan**  
**State Hearing Officer**