



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Earl Ray Tomblin  
Governor

Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Rocco S. Fucillo  
Cabinet Secretary

October 23, 2012

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Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 19, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Aged/Disabled Waiver services.

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 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 no longer meet the medical criteria to receive Aged/Disabled Waiver services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your services under the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau for Senior Services  
Allied Nursing and Community Services

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW**

**IN RE:    ----**,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-2136**

**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 held on October 19, 2012, by videoconference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed August 28, 2012.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued pending a decision.

**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

----, RN, Case Manager, Allied Nursing and Community Services

----, Homemaker

Kay Ikerd, RN, Bureau for Senior Services (testified by phone)

Teena Testa, RN, West Virginia Medical Institute (testified by phone)

Presiding at the hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's proposal to terminate Claimant's Aged/Disabled Waiver services is 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 July 11, 2012
- D-3 Potential Denial Letter dated July 16, 2012
- D-4 Notice of Decision dated August 22, 2012
- D-5 Pre-Admission Screening dated August 2, 2011

##### **Claimants' Exhibits:**

- C-1 Medical Records

#### **VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on July 11, 2012. On that date, Teena Testa, RN, with the West Virginia Medical Institute (WVMI) completed a Pre-Admission Screening (PAS)(D-2) with Claimant.

Claimant was awarded deficits in the areas of vacating a building, eating, grooming, and continence. One (1) additional deficit is required for Claimant to continue receiving ADW services (D-1).

- 2) ----, Claimant's Case Manager, stated the areas in contention were bathing, dressing and transferring. Ms. ---- stated Claimant prefers his homemaker to wait outside of the bathroom while he bathes, standing by the door in case he needs assistance. Ms. ---- stated his homemaker has assisted Claimant into and out of the shower on occasion and a friend assists him with bathing when he becomes short of breath. Ms. ---- stated Claimant receives assistance with dressing from family members, who will help with his socks and shoes if he is feeling weak.

Ms. ---- submitted medical records for Claimant and correspondence from his physician (C-1) that details Claimant's knee injury, which is inoperable at this time. Claimant is unsteady and requires assistance with transferring at times. Ms. ---- stated Claimant has a history of falls, and he requires assistance in getting back up again.

- 3) Teena Testa, RN with WVMI, testified to the findings of the July 2012 PAS. Ms. Testa stated that during the assessment, Claimant denied needing any assistance with bathing and dressing. Ms. Testa observed Claimant transfer and ambulate with the use of a cane and noted his gait was slow but steady. Ms. Testa stated Claimant was oriented during the assessment and she had no reason to doubt his answers.

- 4) Pertinent parts of the August 2011 PAS (D-5) document:

Bathing: Client states he takes a shower and a sponge bath. He notes there are times he cannot get into the tub and therefore he would sponge off. Client states he is able to wash his face, chest, arms and hands. He states he does his bathing in the evening and states his wife helps him do his feet, legs and back.

Dressing: Client notes he can put his shirts on himself. He states he is able to button his shirts. Client states he can put his pants on himself. He states the homemaker help him *[sic]* get his shoes and his socks on.

- 5) Pertinent parts of the July 2012 PAS (D-2) document:

Bathing: Transferring in and out of tub or shower: client notes he does take a shower. He states he is able to get himself in and out of the tub. He notes the homemaker stays close by as he is getting in the tub in case he needs her. Client notes he is able to wash his face, chest, arms and hands. Client also notes he can wash his feet, back, legs and private areas. I ask *[sic]* the client if the homemaker helps him with his bathing and he states she does not.

Dressing: Shirt: Client notes he is able to get his shirts on himself. He denies needing any assistance with this, he notes his homemaker will get his clothes down for him and lay them out. Pants: Client states he can put his pants on himself. He is able to pull them up himself, his homemaker will get his pants for him to wear but he can put them on himself. Buttons, Zippers, Snaps: Denies needing assistance with zipping his zipper and buttoning his buttons. Socks: Client notes he does have a hard time getting his socks on but he does this himself. [Case Manager] ask *[sic]* the client if the homemaker helps him get his socks on and he states he is hard headed and does not ask for assistance. Shoes: Client states he puts his shoes on himself.

Transferring: In and out of bed/chair: client does sleep in his bed, he is able to get himself in and out of the bed, he denies needing any assistance. He did get himself up from his chair. He did use his cane to help him stand.

- 6) Aged/Disabled Waiver Policy Manual § 501.5.1.1 states (D-1):

### 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 2012 PAS in conjunction with his annual medical evaluation.
- 2) The matter before the Board of Review is whether or not the WVMi nurse correctly assessed Claimant based on Claimant's circumstances at the time of the medical evaluation and based on the information made known to her.
- 3) During the assessment, Claimant and his representatives denied Claimant requiring assistance in bathing and dressing. The WVMi nurse thoroughly explored these areas

with Claimant and he denied all areas of assistance. Claimant also denied needing physical assistance with transferring. Claimant was observed to transfer with the use of an assistive device, using a steady gait during the assessment.

- 4) Based on the information provided, Claimant was correctly assessed as Level 1 – self/prompting – for bathing and dressing and a Level 2 – supervision/assistive device – for transferring. No additional deficits can be awarded.
- 5) Claimant no longer meets the medical criteria to continue receiving Aged/Disabled Waiver services.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate Claimant's 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 23<sup>rd</sup> day of October 2012**

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