



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 24, 2012

-----  
-----  
-----

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' 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 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 no longer meet the medical criteria required to continue receiving Aged/Disabled Waiver services.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to terminate your 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.: 11-BOR-2182**

**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 October 5, 2011.

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

**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  
Brenda Myers, RN, West Virginia Medical Institute

-----, 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 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 September 6, 2011
- D-3 Pre-Admission Screening dated October 27, 2010
- D-4 Potential Denial Letter dated September 12, 2011
- D-5 Notice of Decision dated September 29, 2011

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

- 1) Claimant was reevaluated for medical eligibility for the ADW program on September 6, 2011. A Pre-Admission Screening (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI)(D-2).

Claimant was awarded deficits in the areas of grooming, dressing and continence. Two (2) additional deficits were required for Claimant to continue receiving ADW services (D-4).

- 2) -----, Claimant's son and caregiver, testified that he prepares Claimant's meals for her and cuts up her food once it is prepared. ----- stated he must supervise Claimant while she is eating in case she gets choked.

----- stated his mother would become confused in an emergency and would be unable to vacate without assistance. ----- testified Claimant's ability to walk has

declined in the last few months and her memory loss has increased. ----- stated he now sets up Claimant's medications for her.

----- testified his mother is completely dependent on him and he stays with her all day. ----- stated Claimant tries to act independently and overstated her abilities during the assessment.

- 3) Brenda Myers, RN with WVMi testified to the PAS she completed for Claimant in September 2011. Ms. Myers stated Claimant and ----- were adamant that Claimant could vacate in an emergency independently. Ms. Myers stated she discussed the area in detail with Claimant and ----- due to Claimant's diagnoses and her age, but both were insistent Claimant could vacate without physical assistance.
- 4) Kay Ikerd, RN with the Bureau of Senior Services referenced Claimant's PAS from her previous medical assessment in 2010. Ms. Ikerd pointed out Claimant was given deficits for vacating, eating and bathing in 2010 that she did not receive in 2011.
- 5) Pertinent parts of the October 2010 PAS read (D-3):

Vacating: Member would need physical assistance to vacate in an emergency. She uses furniture to assist herself to stand and uses walker daily.

Eating: Member can feed herself but dtr states she has to cut up meats for her. Grips were fair in both hands.

- 6) Pertinent parts of the September 2011 PAS read (D-2):

Vacating: Discussed vacating with member and grandson. Both of them verbalize that member could vacate in the event of an emergency. Member walks most of the time independently and states when needed she will reach out and steady herself with wall or furniture. She walks little slower than a normal pace but states she can walk down the steps from either door by taking step one at a time and holding on to the hand rail. Continued to discuss this subject with them and RN explained due to member's age and dx from MD listed chronic weakness will mark need for supervision. Grandson when he is there he will loop his arm through hers but states he is not supporting her. He verbalized that she is able to go down the steps without him as he doesn't has made sure of her ability as he does not want her to be dependent only doing it when he is there because he is not always there and she is by herself. Member voiced agreement with comments.

Eating: She states she feeds herself and she cuts up her own foods. I specifically asked once food is prepared and cooked for her does she need assistance from family to cut up food for her in order for her to eat

and she denies. I asked if meat was prepared such as steak, chicken or porkchop if she has the ability to use a knife and fork and cut up her own foods and she states yes. Grandson agreed.

Medication Administration: Member sets up meds into weekly planner, grandson states he helps supervise as she sets up meds. He states he double checks and asks to make sure she has taken meds daily but states she is good about remembering to take them. She can open the bottles and place them in her mouth.

7) 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 September 2011 PAS.
- 2) Claimant denied needing physical assistance to vacate in the event of an emergency to the WVMi nurse. The area of vacating was explored in depth with Claimant and those present during the assessment, all of whom assured the WVMi nurse that Claimant could walk independently and would be able to vacate in an emergency. Claimant has shown improvement in this area since the 2010 PAS.
- 3) Claimant advised the WVMi nurse that she could feed herself and denied anyone cutting up her foods for her. The WVMi nurse questioned Claimant specifically about her ability to cut certain foods and Claimant maintained she cut her own food. Claimant reported needing her foods cut for her during the 2010 medical assessment.
- 4) The WVMi nurse assessed Claimant's abilities to vacate and eat independently based on the information made known to her during the medical evaluation. Based on this information, Claimant was correctly assessed as vacating with supervision and eating independently. No deficits can be awarded in these areas.
- 5) Claimant has the ability to physically administer her own medications. Although Claimant's son testified he sets up Claimant's pill box for her, prompting and supervision of medication administration does not qualify as a deficit.
- 6) Based on the information provided, 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 24<sup>th</sup> day of January 2012**

---

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