



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

Karen L. Bowling
Cabinet Secretary

April 23, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1542

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Bureau of Senior Services

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1542

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 21, 2015, on an appeal filed March 9, 2015.

The matter before the Hearing Officer arises from the February 10, 2015, decision by the Respondent to deny the Claimant services under the Aged and Disabled Waiver program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN with the West Virginia Medical Institute. The Claimant appeared by her daughter and Medical Attorney-in-Fact, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy §§ 501.5.1 and 501.5.1.1
- D-2 Pre-Admission Screening (PAS) dated January 21, 2015
- D-3 PAS Summary dated January 22, 2015
- D-4 Medical Necessity Evaluation Request dated December 19, 2014
- D-5 Potential Denial dated January 23, 2015
- D-6 Notice of Decision: Final Denial dated February 10, 2015

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the

evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On January 21, 2015, the Claimant was evaluated to determine medical eligibility for the Aged and Disabled Waiver program. West Virginia Medical Institute (WVMI) Nurse [REDACTED] completed a Pre-Admission Screening (PAS) form (D-2) with the Claimant to assess her functional abilities in the home. Nurse [REDACTED] found (D-3) that Claimant had deficits in the areas of vacating in an emergency, eating, grooming and orientation.
- 2) The Respondent issued notice (D-6) to the Claimant of its decision to deny Aged and Disabled Waiver services as a result of the determination that she did not meet the medical criteria for the program. Policy (D-1) requires that an applicant must have at least five (5) deficits to qualify for the program.
- 3) [REDACTED], the Claimant's daughter, contested the Claimant not receiving deficits in the areas of bathing, dressing and medication administration. Ms. [REDACTED] testified that she physically assists the Claimant into the bathtub and then gives instructions for her mother to bathe herself, washing her back for her. Ms. [REDACTED] stated she assists the Claimant in drying off. Regarding dressing, Ms. [REDACTED] testified that her mother gets confused with what items of clothing to put on first, and she will assist the Claimant with her undergarments. Ms. [REDACTED] stated the Claimant can place her medications in her mouth when given to her, but they must hide her medications to ensure they are taken properly. Ms. [REDACTED] was not present during the assessment and could not explain the discrepancies in the information given to Nurse [REDACTED] and the level of care Ms. [REDACTED] provides her mother.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual §501.3.2 sets forth the medical eligibility criteria. An individual must have five (5) deficits on the Pre Admission screening (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

Eating ----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 Bathing ----- Level 2 or higher (physical assistance or more)
 Dressing ----- Level 2 or higher (physical assistance or more)
 Grooming --- Level 2 or higher (physical assistance or more)
 Continence (bowel, bladder) -- Level 3 or higher; must be incontinent
 Orientation -- Level 3 or higher (totally disoriented, comatose)
 Transfer ----- Level 3 or higher (one-person or two-person assistance in the home)
 Walking ----- Level 3 or higher (one-person assistance in the home)
 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/her own medications.

DISCUSSION

The Claimant was assessed as Level 1 – prompting/supervision – in the areas of bathing and dressing. Credible testimony from the Claimant’s representative indicated that the Claimant requires physical assistance in the area of bathing in transferring into the tub as well as washing her back and drying off. The Claimant will receive a deficit in the area of bathing. The Claimant receives physical assistance in the area of dressing due to mental confusion and will receive a deficit in this area.

In order to receive a deficit in medication administration, the Claimant would require physical assistance to administer her medications. The testimony provided indicated that the Claimant has the ability to place her medications in her mouth, and was therefore correctly assessed as requiring prompting/supervision in this area.

CONCLUSIONS OF LAW

Whereas the Claimant was found to be demonstrating deficits in the areas of bathing and dressing in addition to deficits in vacating, eating, grooming and orientation as derived from the January 2015 PAS, the Claimant meets the medical criteria to receive Aged and Disabled Waiver services.

DECISION

It is the decision of the State Hearing Officer to **reverse** the Department's denial of services for the Claimant under the Aged and Disabled Waiver program.

ENTERED this 23rd day of April 2015

**Kristi Logan
State Hearing Officer**