



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, West Virginia 25704

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 12, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 11, 2005. Your hearing request was based on the Department of Health and Human Resources' (WVMI) action to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services 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 and benefit levels for the Aged/Disabled Waiver Services Program are determined based on current regulations. One of these regulations is the individual in the Waiver Program must qualify medically. These are individuals who qualify medically to be placed in a skilled nursing care facility but who have chosen the Waiver Program Services as opposed to being institutionalized. (Section 570 of Title XIX Aged/Disabled Home and Community Based Services Waiver, Policies and Procedures Manual, 11-1-03).

The information which was submitted at the hearing revealed that you do not require the type of services provided in a skilled nursing care facility and are not medically eligible for the Aged/Disabled Waiver Services Program.

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program.

Sincerely,

Thomas M. Smith  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
Kay Ikerd, BOSS  
Kim Sang, WVMI  
[REDACTED] SCAC

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 11, 2005 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 originally convened on May 11, 2005 on a timely appeal filed January 6, 2005.

It should be noted here that any benefits under the Aged/Disabled Home and Community Based Services Waiver Program have been continued pending the results of this hearing. It should also be noted that Kay Ikerd from the Bureau for Senior Services (BOSS) and Kim Sang from West Virginia Medical Institute (WVMI) testified by speaker phone.

All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE**

The program entitled Title XIX Aged/Disabled Waiver Services Program is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community based services. The Program's target population is individuals who would otherwise be placed in a skilled nursing facility (if not for the waiver services).

**III. PARTICIPANTS**

1. \_\_\_\_\_, Claimant.
2. \_\_\_\_\_ R. N. Supervisor, SCAC.
3. Kay Ikerd, BOSS (testifying by speaker phone).
4. Kim Sang, R. N., WVMI (testifying by speaker phone).

Presiding at the hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED**

The question to be decided is whether the claimant meets the medical requirements of the Title XIX Aged/Disabled Waiver Services Program in needing skilled nursing care.

**V. APPLICABLE POLICY**

Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

- Exhibit #1 Copy of regulations (2 pages).
- “ #2 Copy of hearing request.
- “ #3 Copy of PAS-2000 denied 10-14-04 (5 pages).
- “ #4 Copy of potential denial letter 12-6-04 (2 pages).
- “ #5 Copy of denial letter 2-22-04 (2 pages).
- “ #6 Copy of reevaluation request 8-9-04.

**VII. FINDINGS OF FACT**

1. The claimant was a recipient of services under the Title XIX Aged/Disabled Waiver (ADW) Services Program when a PAS-2000 was completed by Kim Sang, R. N. from West Virginia Medical Institute (WVMI) on 10-14-04 (Exhibit #3).
2. WVMI is the agency contracted through the WV Department of Health & Human Resources (WVDHHR) to evaluate and reevaluate medical eligibility for the ADW Program.
3. A PAS-2000 was completed by Kim Sang, R. N. from WVMI, on 10-14-04 and was denied for medical eligibility for the Title XIX ADW Program (Exhibit #3).
4. Findings of PAS-2000 by Kim Sang on 10-14-04 (Exhibit #3) reflected that the claimant had three (3) deficits in the activities of daily living in the areas of eating, bathing, and dressing and that the claimant did not meet the criteria for medical eligibility for the Title XIX ADW Program as she did not have the required five (5) deficits.
5. Ms. Sang testified that she reviewed the findings of the PAS-2000 with all those present and that all parties were in agreement with the findings.
6. Testimony from Ms. [REDACTED] indicated that the claimant's medication has to be put in compartments, that she went to the claimant's home and did drills to see if the claimant could get out in an emergency and she could not, that there was no way for her to open the window, that she has a problem with urine incontinence, and that Legal Aid was notified but chose not to represent the claimant.
7. Testimony from Ms. \_\_\_\_\_ indicated that she does not notice or feel the incontinence of her bladder and that she feels the seepage but it does not happen very often.
8. Testimony from Ms. Sang indicated that the claimant told her she could take her own medication, that medication set-up would not qualify for a deficit, and that the claimant told her she could vacate the building.
9. There were three (3) areas of dispute with the PAS-2000 completed by Ms. Sang on 10-14-04 for which a deficit could be awarded in the areas of bladder incontinence, vacating the building in an emergency, and administering medication. The claimant testified that her bladder incontinence did not happen very often and a deficit cannot be given unless it occurs at least three (3) times week. In regard to administering medications, set-up assistance is needed but that does not qualify as a deficit. The State Hearing Officer is awarding a deficit for being physically unable to vacate the building in an emergency based primarily on Ms. [REDACTED] testimony but the addition of one (1) more deficit does not make the claimant medically eligible for the Title XIX Aged/Disabled Waiver Services Program as five (5) deficits are required and the claimant has only four (4) deficits.

**CONCLUSIONS OF LAW**

1. Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policies and Procedures Manual, 11-3-03 states, in part,

"Section 570 PROGRAM ELIGIBILITY FOR CLIENT

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older
- B. Be a permanent resident of West Virginia.....
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

#### 570.1 MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

##### 570.1.a PURPOSE

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the state.

##### 570.1.b MEDICAL CRITERIA

An individual must have five 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:

- A. #24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #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)
  - Grooming - Level 2 or higher (physical assistance or more)
  - Dressing - Level 2 or higher (physical assistance or more)
  - Continence - Level 3 or higher (must be incontinent)
  - Orientation - Level 3 or higher (totally disoriented, comatose)
  - Transfer - Level 3 or higher (one person or two persons assist in the home)
  - Walking - Level 3 or higher (one person assist 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)
- D. #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.
- E #28: Individual is not capable of administering his/her own medications."

2. Five deficits are required in order to meet the medical eligibility criteria for the Title XIX Aged/Disabled Wavier Services Program and the claimant has only one (1) deficit.

### VIII. DECISION

Based upon the evidence and testimony presented, I must uphold the action of WVMI to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program.

**IX. RIGHT OF APPEAL**

See Attachment.

**X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.