



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704
February 17, 2005

Joe Manchin III
Governor

Dear Mr. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 16, 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 Title XIX 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. (Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-1-03).

The information which was submitted at the hearing revealed that you do not meet the criteria for requiring the services which are normally provided in a skilled nursing care facility.

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: State Board of Review
Kay Ikerd, BOSS
Michelle Willey, WVMI

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 February 16, 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 February 16, 2005 on a timely appeal filed January 5, 2005.

It should be noted here that any benefits under the Aged/Disabled Waiver Services Program (hereinafter ADW) have been denied pending the results of this hearing. It should also be noted that the representative from the Bureau for Senior Services (Kay Ikerd) testified by speaker phone upon agreement of the claimant. All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Medicaid Waiver Services 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. _____, Claimant's friend.
3. Michelle Willey, R. N., WVMI
4. Kay Ikerd, Bureau for Senior Services (BOSS).

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 eligibility requirements for the ADW Program.

V. APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-1-03.

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VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- Exhibit #1 Copy of regulations (2 pages).
" #2 Copy of notification letter 12-20-04 (2 pages).
" #3 Copy of PAS-2000 denied 10-12-04 (6 pages).
" #4 Copy of notification letter 12-2-04 (3 pages).
" #5 Copy of hearing request.
" #6 Copy of letter from _____ 12-22-04.

Exhibit #C1-1 Statement from _____, M. D. 1-24-05.

VII. FINDINGS OF FACT

1. The claimant was an applicant for the Title XIX Aged/Disabled Waiver Services

Program with medical eligibility evaluated on 10-12-04 by West Virginia Medical Institute (WVMI) and it was determined that the claimant did not meet the medical criteria of having five (5) deficits on the PAS-2000 in order to meet the medical qualifications for the program (Exhibit #3).

2. Findings of the PAS-2000 completed on 10-12-04 by Michelle Willey of WVMI (Exhibit #3) showed the claimant met a deficit in the major life areas of needing physical assistance with bathing, dressing and grooming for a total of three (3) deficits.

3. The PAS-2000 was denied for medical eligibility on 10-12-04 and a potential denial letter was sent 12-2-04 (Exhibit #4) and the provider was requested to submit any additional information and none was submitted and a notification of denial was sent on 12-20-04 (Exhibit #2).

4. Mr. _____ testified that he was too sick to get up the day Ms. Willey came to see him, that his feet were swollen, that he has an electric wheelchair and moves around the house freely with it, that he has urinary incontinence every other day, that he did not tell Ms. Willey about that because she was a woman and he did not feel comfortable talking to her about it, that he can get out of his apartment on the 6th floor through the elevator but would not be able to get out if he could not use the elevator without someone's help, and that sometimes he cannot tell if he needs to urinate.

5. Ms. _____ testified that Mr. _____'s incontinence occurs more often than he says and that if there was an emergency such as a fire, he would not be able to get out of his apartment as he would have to use the stairs and he could not get out by himself.

6. The only areas of dispute appear to be with bladder incontinence and vacating the building in an emergency. The State Hearing Officer is awarding a deficit to the area of bladder incontinence as the claimant testified that he has urinary incontinence every other day, which would be three (3) or more times a week and would qualify as more than occasional incontinence, and that he did not want to talk about that subject with a woman (Ms. Willey) during the interview on 10-12-04. In regard to vacating a building in an emergency, the claimant testified that he would need assistance vacating the building in an emergency if he could not use the elevator and Ms. _____ supported his testimony. However, the medical assessment of the PAS-2000 completed by Ms. Willey addressed the question of vacating the building in an emergency and the claimant told Ms. Willey that "I can walk down the steps, but I can't go up" and that "I hold to the rails" and that he would not need hands on assistance but would require supervision. In addition, Ms. Willey testified that the claimant told her during the interview that he could get out of the building in an emergency with supervision. While the claimant provided a medical statement (Exhibit #C1-1) which stated that he

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was unable to get in and out of the building without assistance, the statement does not say physical assistance is needed and the State Hearing Officer is convinced that the claimant gave an accurate accounting of his ability to vacate the building in an emergency during the interview with Ms. Willey on 10-12-04 and a deficit is not being awarded for vacating the building in an emergency. The claimant has four (4) deficits which do not meet the required five (5) deficits to be eligible for the Title XIX Aged/Disabled Waiver Services Program

CONCLUSIONS OF LAW

1. Title XIX Aged/Disabled Home and Community-Based Waiver, Policies and Procedures Manual, 11-1-03 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 conditions 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 the building. a) and b) are not considered deficits.
- C. #26: Functional abilities of individual in the home.

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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."

VIII. DECISION

Based upon the evidence and testimony presented, I must uphold the action of WVMI to deny medical eligibility for the ADW Program. In order to meet the medical eligibility requirements of the ADW Program, there must be five (5) deficits in the functional abilities of the individual as demonstrated on the PAS-2000. The PAS-2000 which was denied 10-12-04 (Exhibit #3) showed that Mr. _____ met three (3) deficits in the functional activities of daily living in the areas of bathing, dressing, and grooming. During the hearing, there was testimony on behalf of the claimant to indicate that he was incontinent of the bladder and needed physical assistance with vacating a building in an emergency and the State Hearing Officer awarded an additional deficit in the area of bladder incontinence but did not award a deficit in the area of vacating the building in an emergency.

Since there was no testimony to indicate that a deficit existed in any other area, the State Hearing Officer finds that the claimant has only four (4) deficits in the functional activities of daily living and that five (5) deficits are required in order to meet the medical eligibility guidelines for the Title XIX Aged/Disabled Wavier Services Program. Therefore, the State Hearing Officer finds that the claimant does not meet the medical eligibility criteria for the ADW Program and the State Hearing Officer must uphold the action of the Department (WVMI) to deny medical eligibility for the ADW Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.