



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 11, 2005

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 10, 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
Kathy Gue, WVMI
SWCA

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 10, 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 10, 2005 on a timely appeal filed January 26, 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 Kathy Gue 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. _____, Claimant's daughter.
3. Kay Ikerd, BOSS (testifying by speaker phone).
4. Kathy Gue, 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 11-22-04 (5 pages).
- “ #4 Copy of potential denial letter 12-7-04 (2 pages).
- “ #5 Copy of additional documentation (3 pages).
- “ #6 Copy of denial letter 1-13-05 (2 pages).

Exhibit #CI-1 Copy of report from [REDACTED] M. D. 8-02-04 (2 pages)

- “ #CI-2 Copy of report from [REDACTED] M. D. 4-29-05 (2 pages).
- “ #CI-3 Copy of report from [REDACTED] M. D. 4-19-05.

(it should be noted that Ms. Ikerd objected to the three (3) documents marked Exhibits #CI-1, #CI-2, and #CI-3 and the State Hearing Officer ruled that the documents would be admitted to the hearing record and the State Hearing Officer would consider their value in regard to relevance.)

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 Kathy Gue, R. N. from West Virginia Medical Institute (WVMI) on 11-22-04 (Exhibit #3) and was denied for medical eligibility for the Title XIX ADW Program .

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. Findings of PAS-2000 by Kathy Gue on 11-22-04 (Exhibit #3) reflected that the claimant had one (1) deficit in the activities of daily living in the area of bladder incontinence 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. _____ testified that she was with her mother when the first PAS-2000 was completed but not when the recent one was, that she assists her mother in dressing, that she does have bowel incontinence, that she does have a lot of disorientation, that she has to fix her medications for her, that her mother needs assistance with transferring as she has to take her anywhere she goes, that her mother cannot clean house or cook, that her mother sits on the couch and everything has to be done for her, and that her mother is not functional at all.

6. Ms. _____ testified that she is depressed, that she gets bad in her fingers, that she has gout, that she has pain in her heart, that she told Ms. Gue she cannot do anything when she has gout, that she told her if the house caught on fire, she would not be able to get out, and that the pain is awful.

7. Ms. Gue testified that the claimant told her how she dressed herself, that the bowel incontinence was only occasional and another deficit could not be given anyway since a deficit was already given for bladder incontinence, that the claimant told her she could take her medications, that transferring involves getting up from a chair, bed, etc., that the claimant told her she needed help when the gout acted up, that the claimant told her she could vacate with the walker and was capable of taking medications.

8. The areas of dispute with the PAS-2000 completed by Ms. Gue 11-22-04 for which a deficit could be awarded were dressing, disorientation, transferring, administering medications, and vacating the building in an emergency. While Ms. _____ testified that she could not vacate the building in an emergency, the State Hearing Officer is convinced that the claimant could vacate the building in an emergency with supervision only and no deficit can be given for that area. The State Hearing Officer is also convinced that the responses given by Ms. _____ to Ms. Gue on 11-22-04 were accurate as there was no evidence of a need with dressing, disorientation, and administering medications. The State Hearing Officer observed that the claimant needed some physical assistance with transferring on the day of the hearing but no deficit can be given as the claimant informed Ms. Gue on 11-22-04 that she needed no assistance. The State Hearing Officer finds that at the time of the completion of the PAS-2000 on 11-22-04, there were no areas for which additional deficits can be awarded.

9. The claimant has only one (1) deficit and does not meet the criteria for medical eligibility for the ADW Program as five (5) deficits are required.

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.