



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 12, 2006

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

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 10, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program.

In arriving at a decision, the State Hearings 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 meet the medical criteria to be eligible for the Title XIX Aged/Disabled Waiver Services Program.

It is the decision of the State Hearings Officer to reverse the action of the Department 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: Erika H. Young, Chairman, Board of Review  
Brian Holstine, Bureau for Senior Services  
\_\_\_\_\_, WVMI  
\_\_\_\_\_, WV Advocates  
\_\_\_\_\_, CCIL

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 06-BOR-1066**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 10, 2006 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 May 10, 2006 on a timely appeal filed February 3, 2006.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. It should also be noted that the hearing was originally scheduled for April 4 and April 10, 2006 but was rescheduled originally at claimant's request and then at Department's request.

**II. PROGRAM PURPOSE:**

The Program entitled Title XIX Aged/Disabled Wavier Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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 homemaker.
3. \_\_\_\_\_ CCIL casemanager.
4. \_\_\_\_\_, R. N. Supervisor, Mason Co. Action Group.
5. \_\_\_\_\_, Advocate, WV Advocates.
6. Brian Holstine, Bureau for Senior Services (participating by speaker phone).
7. \_\_\_\_\_, West Virginia Medical Institute (participating by speaker phone).

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

#### **IV. QUESTIONS 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:**

Chapter 500 Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03, Section 570.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- 1 Copy of regulations (8 pages).
- 2 Copy of hearing request received 2-3-06 (2 pages).
- 3 Copy of PAS-2005 completed 1-3-06 (8 pages).
- 4 Copy of potential denial letter dated 1-5-06 (2 pages).
- 5 Copy of denial letter 1-23-06 (2 pages).
- 6 Copy of evaluation request.

##### **Claimant's Exhibits:**

- Tab A Copy of denial letter 1-23-06 (6 pages).
- Tab B Copy of PAS-2005 1-3-06 (5 pages).
- Tab C Copy of letter from Dr. \_\_\_\_\_ 4-4-06.
- Tab D Copy of letter from Dr. \_\_\_\_\_ 4-4-06 (2 pages).
- Tab E Copy of Plan of Care (2 pages).
- Tab F Copy of letter from \_\_\_\_\_ 3-22-06.
- Tab G Copy of letter from \_\_\_\_\_ 1-26-06.

(It should be noted that Mr. Holstine objected to the letters from Dr. \_\_\_\_\_ and Dr. \_\_\_\_\_ (Exhibits Tab C and Tab D) as being untimely since they were not provided during the two (2) week potential denial period and the State Hearing Officer ruled that the letters were not relevant since they did not indicate that they were addressing conditions which existed at the time of the assessment on 1-3-06).

## VII. FINDINGS OF FACT:

- 1) The claimant was a recipient for the Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2005 was completed by Julia [REDACTED] of WVMi on 1-3-06 and was denied for medical eligibility (Exhibit #3 and Tab B).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 1-3-06 determined that only three (3) deficits existed in the functional activities of bathing, dressing, and grooming.
- 3) Mr. Holstine testified about the regulations (Exhibit #1).
- 4) Ms. [REDACTED] testified that she completed the PAS-2005 on 1-3-06 and that she determined that the claimant met a deficit in bathing, dressing, and grooming.
- 5) The claimant was notified of potential denial on 1-5-06 (Exhibit #4), a denial letter was issued on 1-23-06 (Exhibit #5) and a hearing request was received by the Bureau for Medical Services on 1-3-06 (Exhibit #2), by the Board of Review on 3-1-06, and by the State Hearing Officer on 3-6-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of bladder incontinence and transferring.
- 7) Testimony from the claimant revealed that she is not aware of when she needs to go the bathroom, that she wears pads all the time and is wet every morning, that she does not have an urge to go and is only aware of when she needs to go when she gets wet, that she has had a paralytic neurogenic bladder for 3-4 years, that she has had kidney problems since age 26, that she has post-polio syndrome with weakness in her arms, that she does not have enough strength in her arms to use a wheelchair, that she sits in a lift chair and cannot get off the couch so she never sits there, that she has fallen out of the lift chair and had to call for help to get her off the floor.
- 8) Testimony from Ms. [REDACTED] revealed that the claimant's bladder is paralyzed, that she is incontinent of bladder, and that the Plan of Care (Exhibit #E) shows that the claimant requires assistance from the homemaker with transferring.
- 9) Testimony from Ms. [REDACTED] revealed that the claimant has been on the program since July, 2000, that she knows that the claimant is incontinent, and that the claimant does not have an urge to urinate and is only aware after the fact.
- 10) Testimony from Ms. [REDACTED] revealed that the claimant is wet every morning, that she has to do laundry to clean up, that the claimant does not know when to go, and that the claimant could not get out of the lift chair if the power was off.
- 11) Testimony from Ms. [REDACTED] revealed that the claimant said nothing on the day of the assessment about not knowing when she needed to urinate, that the claimant would need at least one-person assistance at all times in transferring to get a deficit, that the protocol tells her that it must be at all times.
- 12) Testimony from Mr. Holstine indicated that the regulations do not state that one-person assistance must be required at all times in order to be awarded a Level III finding but that it is in the WVMi protocol.

- 13) The areas of dispute involved bladder incontinence and transferring.
- 14) In regard to the area of bladder incontinence, testimony on behalf of the claimant indicated that she does not know when to urinate. The fact that the claimant sometimes makes it to the bathroom and empties into the toilet does not preclude the fact that she is not aware, because of her paralyzed bladder, of when she needs to urinate. The State Hearing Officer finds that the claimant's inability to know when to urinate meets the criteria for total incontinence and a deficit is awarded in that area.
- 15) In regard to transferring, the State Hearing Officer finds that the claimant does require one-person assistance (Level III) with transferring even though she has a lift chair that she uses most of the time. Without the lift chair, the claimant clearly would require one-person assistance with transferring. The claimant testified that she restricts herself to the lift chair as she can not transfer without one-person assistance if she sits anywhere else. In addition, the State Hearing Officer finds that the regulations provided during the hearing (Exhibit #1) do not state that one-person assistance is required 100% of the time in order to be assigned a Level III finding and nothing was provided as evidence during the hearing to show that the WVMI protocol requires that one-person assistance be 100% of the time in order to receive a deficit. Thus, the claimant qualifies for an additional deficit in transferring.
- 16) 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. Decubitus - Stage 3 or 4

B. Unable to vacate a building-a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alheimers, or related condition. (Item 25, I and 33, on the PAS-2005).

C. 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 total incontinent-defined as when the recipient has no control of bowel or bladder functions at any time.)

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. 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. (Item 26 on the PAS-2005)

E Individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube, or eye by some one other than the recipient at all times."

### VIII. CONCLUSIONS OF LAW:

- 1) Regulations in Section 570.1.b require that five (5) deficits exist in the major life areas to meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program.

- 2) The claimant was determined to have only three (3) deficits on the PAS-2005 completed on 1-3-06 in the areas of bathing, dressing, and grooming.
- 3) The areas of dispute involved bladder incontinence and transferring. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant qualified for a deficit in the areas of bladder incontinence and transferring and two (2) additional deficits are awarded for these areas.
- 4) The claimant qualifies for five (5) deficits and meets the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as five (5) deficits are required.

**IX. DECISION:**

It is the decision of the State Hearing Officer to reverse the action of the Department (WVMI) to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program. The claimant qualifies for 10 points (2 under item #23 and 8 under item #25) for Level of Care B for three (3) hours per day or 93 hours per month.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12th Day of May, 2006.**

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**Thomas M. Smith  
State Hearing Officer**