



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

October 29, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 25, 2007. 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 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 for the ADW program is based on current policy and regulations. Some of these regulations state as follows: The Aged Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged Disabled (HCB) Services Manual 503- (11/1/03).

The information which was submitted at your hearing revealed that you did not meet the medical eligibility criteria for services under the Title XIX Aged Disabled Waiver Services Program.

It is the decision of the State Hearings Officer to **uphold** 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
Kay Ikerd, BOSS
[REDACTED], WVMI

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

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Claimant,

v.

Action Number: 07-BOR-1975

**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 telephone conference fair hearing concluded on October 25, 2007 for █ on a timely appeal filed August 15, 2007. 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.

It should be noted here that the claimant's benefits have been denied pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged Disabled Waiver 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 an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

Claimant.
Claimant's mother.
[REDACTED], Social Worker, [REDACTED]
Kay Ikerd, R. N., Bureau of Senior Services (BOSS).
[REDACTED], R. N., WV Medical Institute (WVMI).

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 Department was correct in the decision to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §500

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of Aged/Disabled Home and Community based Services Manual §503 - 503.4 (4 pages).
- D-2 Copy of Pre-Admission Screening, PAS, completed 7-18-07 (8 pages).
- D-3 Copy of notice of potential denial dated 7-19-07 (2 pages).
- D-4 Copy of notice of denial dated 8-3-07 (2 pages).

(It should be noted that additional documents submitted by the Department were not admitted as evidence and these documents are marked "not admitted" for identification purposes only).

VII. FINDINGS OF FACT:

- 1) The claimant was evaluated for initial medical eligibility for the Title XIX Aged Disabled Waiver Services Program on 7-18-07 by the R.N. from WVMI via a PAS-2000.
- 2) The PAS-2000 completed by the WVMI R.N. on 7-18-07 from WVMI (Exhibit #D-2) determined that only two (2) deficits existed in the areas of eating and bathing.
- 3) Notification of potential denial was issued on 7-18-07 (Exhibit #D-3) showing two (2) deficits when five (5) deficits are required.
- 4) Notice of final denial was issued on 8-3-07 (Exhibit #D-4) showing two (2) deficits.

- 5) Testimony from the WVMI R. N. indicated that she determined the claimant had only two (2) deficits in the activities of daily living and did not meet the medical criteria.
- 6) Testimony from the claimant's mother indicated that the claimant cannot drive as she goes catatonic, that her memory is bad, that some things were overlooked on the PAS-2000, that she just sat and listened and did not add anything, and that she does not remember if she was aware that she could have said something during the interview.
- 7) Testimony from the [REDACTED] Social Worker indicated that the claimant was very disoriented when he saw her but was not totally disoriented as she knew her name and her mother's and that she was able to hold a conversation.
- 8) Testimony from the R.N. from WVMI indicated that she marked on the PAS-2000 that she marked on the PAS-2000 that the claimant had intermittent disorientation, that the claimant's mother was present and all parties were in agreement with her findings.
- 9) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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

- C. Be approved as medically eligible for NF Level of Care.

10) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

11) Aged Disabled Home and Community-Based Services Manual Section 503.1.1 PURPOSE:

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

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

**12) Aged Disabled Home and Community-Based Services Manual Section 503.2
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ---- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Continence-- Level 3 or higher; must be incontinent
bowel
- f. Continence-- Level 3 or higher; must be incontinent
bladder
- g. Orientation-- Level 3 or higher (totally disoriented, comatose)
- h. Transfer----- Level 3 or higher (one person or two person assist
in the home)
- i. Walking----- Level 3 or higher (one person assist in the home)
- j. 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 B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations.

#28 The individual is not capable of administering his/her own medications.

**13) Aged Disabled Home and Community-Based Services Manual Section 503.4
MEDICAL REEVALUATION:**

Annual reevaluations for medical necessity for each ADW member must be conducted.

14) The area of dispute with the findings of the PAS-2000 by the claimant appeared to be in the area of disorientation. The claimant was determined to have intermittent disorientation by the WVMR. N. on 7-18-07 and that finding appears to be accurate as the [REDACTED] Social Worker testified that the claimant was disoriented but knew her name and her mother's name and was not totally disoriented. Since the claimant was not totally disoriented, a deficit cannot be awarded. The State Hearing Officer finds that the testimony and evidence show that the findings by the WVMR. N. on 7-18-07 were correct and that no other deficits can be awarded to the claimant.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. The WVMR N. determined that the claimant had only two (2) deficits in the areas of eating and bathing.

- 2) The only issue raised at the hearing by the claimant for which she could be awarded an additional deficit was for orientation. However, the claimant was correctly determined to be Level II in orientation as she was not totally disoriented. Additional deficits could not be awarded to the claimant and five (5) deficits are required in order to be eligible for the Title XIX Aged/Disabled Waiver Services Program.

IX. DECISION:

It is the decision of the State Hearing Officer that the Department was correct in the determination that this claimant is not medically eligible for the Title XIX Aged Disabled Waiver Services Program. I am ruling to **uphold** the Agency's action to deny medical eligibility for the Title XIX Aged Disabled Waiver Services Program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of October, 2007.

Thomas M. Smith
State Hearing Officer