



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

April 19, 2007

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 18, 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 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 **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  
Linda Wright, BOSS  
JoAnn Ranson, BMS  
[REDACTED], A Special Touch for Seniors

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

\_\_\_\_\_,

**Claimant,**

v. **Action Number: 07-BOR-654**

**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 April 18, 2007 for \_\_\_\_\_ on a timely appeal filed January 22, 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. It should also be noted that the hearing was convened as a telephone conference hearing at claimant's request and that the hearing was originally scheduled for April 4, 2007 but was rescheduled due to reassignment to State Hearing Officer Thomas M. Smith.

**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.



- 2) The PAS-2000 completed by the BMS R.N. on 10-23-06 (Exhibit #D-2) determined that only four (4) deficits existed in the areas of bathing, dressing, grooming, and physical inability to vacate the building in an emergency.
- 3) Notification of potential denial was issued on 12-5-06 (Exhibit #D-3) showing four (4) deficits when five (5) deficits are required.
- 4) Additional information was received during the two (2) week potential denial period on 12-19-06 which included a statement from the claimant's doctor (Exhibit #D-4).
- 5) Notice of final denial was issued on 12-26-06 (Exhibit #D-5) as it was determined by the BMS R. N. that the additional documentation did not change the original findings of the PAS-2000 and that the claimant had only four (4) deficits.
- 6) The claimant's hearing request was received by the Bureau for Medical Services on 1-22-07, by the Board of Review on 2-16-07, and by State Hearing Officer Thomas Smith on 3-9-07.
- 7) The R.N. from BOSS testified about the regulations (Exhibit #D-1).
- 8) Testimony from the BMS R. N. indicated that she determined the claimant had only four (4) deficits in the activities of daily living in the areas of bathing, dressing, grooming, and physical inability to vacate the building in an emergency, that the parties present during the assessment voiced agreement with the findings, that the claimant did not state that he needed one-person assistance with walking, that she does not remember if she asked the claimant if he needed one-person assistance with walking, that the claimant could not demonstrate walking due to shortness of breath (SOB), and that the claimant did not meet the medical criteria for the Title XIX Aged Disabled Waiver Program.
- 9) Testimony from the Casemanager from A Special Touch for Seniors indicated that the PAS-2000 stated that the claimant stood for less than ten (10) seconds and became SOB, that he was unsteady on his feet, that he could not demonstrate walking, that he has a urinal beside his bed and chair because he cannot make it to the bathroom, that he sleeps in his chair at times because he cannot make it to his bed, that he should have been given a deficit for walking, and that he has more than occasional bladder incontinence.
- 10) Testimony from the claimant indicated that he does not understand why he was not given a deficit for walking, that he could only take 2-3 steps using a walker, that he had bladder incontinence every day, that he did not tell the BMS R.N. of his daily incontinence as he was embarrassed to discuss it with several people around, and that he has 100% disability due to his legs.
- 11) 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.

**12) 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.

**13) 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.

**14) 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-- bladder Level 3 or higher; must be incontinent
- 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 medication.

- 15) The areas of dispute involved walking and bladder incontinence. The State Hearing Officer finds that the claimant should have been given a deficit in the area of walking. The BMS R.N. testified that the claimant could not demonstrate walking, that he stood for less than ten (10) seconds, and that she could not remember if she asked the claimant if he needed one-person assistance with walking. The preponderance of evidence and testimony show that the claimant does require one-person assistance with walking and a deficit is awarded in that area. In addition, since a deficit is awarded for walking, the claimant also qualifies for a deficit in wheeling as he was awarded a Level III in that area on the PAS-2000. In regard to bladder incontinence, the claimant testified that he had daily incontinence of the bladder but was embarrassed to tell the BMS R.N. The documentation on the PAS-2000 by the BMS R.N. indicated that the claimant told her that he was not sure how many times a week he had bladder incontinence but that he was always prepared with the depends. The State Hearing Officer finds that the BMS R.N. should have attempted to ascertain the number of times the claimant had bladder incontinence and accepts the testimony of the claimant that it was daily. Thus, the claimant is awarded an additional in the area of bladder incontinence and qualifies for three (3) additional deficits.

**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 WVMI R. N. determined that the claimant had only four (4) deficits in the areas of bathing, dressing, grooming, and vacating the building in an emergency.
- 2) The areas of dispute raised at the hearing by the claimant and his witness involved walking and bladder incontinence. The State Hearing Officer found that the claimant met the criteria for a deficit in walking and bladder incontinence. With the finding of a deficit in walking, the State Hearing Officer also found that the claimant qualified for a deficit in the area of wheeling by virtue of a Level III determination on the PAS-2000 in that area.

3) The claimant has a total of seven (7) deficits.

**IX. DECISION:**

It is the decision of the State Hearing Officer to reverse the action of the Department to deny medical eligibility for the Title XIX Aged Disabled Waiver Services Program. The Department will include a deficit for walking, bladder incontinence, and wheeling and will assign the associated points when assessing the case for level of care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19<sup>th</sup> Day of April, 2007.**

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**Thomas M. Smith  
State Hearing Officer**