



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2269 Park Avenue, Suite 100
Huntington, West Virginia 25704
February 23, 2005

Joe Manchin III
Governor

Dear Mr. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 2004. 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
Pat Davis, WVDHHR

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 22, 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 22, 2005 on a timely appeal filed January 5, 2005.

It should be noted here that any benefits under the Aged/Disabled Home and Community Based Services Waiver Program have been denied 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 caregiver.
3. _____ LCOC, nurse.
4. Pat Davis, APS Worker.
5. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
6. Kathy Gue, WVMI (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. 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.

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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 letter dated 11-22-04.
" #2 Copy of regulations (2 pages).
" #3 Copy of PAS-2000 denied 10-29-04 (4 pages).
" #4 Copy of hearing request received 1-5-05.
" #5 Copy of denial notification letter 12-20-04 (2 pages).

VII. FINDINGS OF FACT

1. The claimant was an applicant 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) (Exhibit #3).
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. A PAS-2000 was completed by Kathy Gue, R. N. from WVMI, on 10-29-04 and was denied for medical eligibility for the Title XIX ADW Program.
4. Findings of PAS-2000 by Kathy Gue on 10-29-04 (Exhibit #3) reflected that the claimant had zero (0) deficits in the activities of daily living and that the claimant did not meet the criteria for medical eligibility for the Title XIX ADW Program as he did not have the required five (5) deficits.
5. Ms. Gue testified that she explained to Mr. _____ the importance of his answers to her questions from the PAS-2000 on 10-29-04.
6. Testimony from the claimant indicated that he cannot bathe himself, that he can button his shirts, that he is 90% blind, and that he has fallen three (3) times in the bathtub.
7. Testimony from Ms. _____ indicated that Mr. _____ cannot cook for himself and that his life is put at risk because of this, that he has only one (1) arm and this limits his ability to function, that he cannot bathe himself as he cannot wash his back or wash under his arm, and that he cannot button his own shirts.
8. Testimony from Ms. _____ indicated that Mr. _____ receives homemaker services through _____ County Opportunity Company (COC) and that he does need assistance with bathing, grooming, and putting on clothes.
9. The only areas of dispute with the PAS-2000 completed by Ms. Gue on 10-29-04 involve the areas of bathing, grooming, and dressing (item #26 b, c, and d).
10. The State Hearing Officer is convinced by the evidence and testimony that the claimant does need physical assistance with bathing but not with grooming and dressing. Therefore, the State Hearing Officer is awarding a deficit in the area of bathing (item #26, b) but the claimant has only one (1) deficit which does not meet the criteria for medical eligibility for the ADW Program as five (5) deficits are required.

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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)

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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. In order to be eligible for the Aged/Disabled Waiver Services Program, an individual must have five (5) deficits identified on the PAS-2000 as specified in the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual under Section 570.1.b listed in the Conclusions of Law in Section VII. The PAS-2000 denied 10-29-04 (Exhibit #3) shows that the claimant has zero (0) deficits in the categories of daily living. Testimony obtained during the hearing convinces the State Hearing Officer that the claimant needs physical assistance with bathing but not in any other daily living activities. Since five (5) deficits must exist in order to be medically eligible and the claimant has only one (1) deficit, the State Hearing Officer must uphold the action of WVMI to determine that the claimant is not medically eligible 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.

