



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
March 14, 2005

Joe Manchin III
Governor

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 11, 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 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 reverse the action of the Department (WVMI) to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program. Your Level of Care will be Level B which allows you three (3) hours per day or 93 hours per month. Your medical eligibility will be reevaluated in December, 2005.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Brian Holstine, BOSS
Kathy Gue, WVMI
_____, Claimant's POA
_____, Pro-Careers
SCAC

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 March 11, 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 March 11, 2005 on a timely appeal filed January 13, 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 Brian Holstine 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 POA.
3. _____, Pro-Careers.
4. Brian Holstine, Bureau for Senior Services (participating by speaker phone).
5. 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.

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 PAS-2000 denied 12-1-04 (4 pages).

Page 2

- " #3 Copy of hearing request received 1-13-05.
" #4 Copy of denial notification letter 12-30-04 (2 pages).
" #5 Copy of potential denial letter 12-8-04 (3 pages).

VII. FINDINGS OF FACT

1. The claimant was an active 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) for reevaluation (Exhibit #2).

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 12-1-04 and was denied for medical eligibility for the Title XIX ADW Program.

4. Findings of PAS-2000 by Kathy Gue on 12-1-04 (Exhibit #2) reflected that the claimant had two (2) deficits in the activities of daily living in the categories of bathing and dressing 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. _____ testified that the claimant could not get out of her residence in an emergency without physical assistance, that she falls all the time and that she thought she told Ms. Gue during the home visit, that the claimant cannot go far without her walker and that her granddaughter frequently has to assist her with walking, that the claimant's shaking is getting worse, that she can transfer on her own on good days but that she has bad days around five (5) days a week and could not get out of a chair or bed without physical assistance on those days, that medication has to be given to her because she does not want to take it, that she can brush her teeth and comb her hair, and that she has occasional bowel incontinence but not very often.

6. Ms. _____ testified that the claimant has been on the ADW Program at least three (3) years, that she does not take her medication because she does not want to take it, that the homemaker has trouble getting the claimant to let her help her bathe, that she would need physical assistance with vacating the building in an emergency, that she would possibly need physical assistance with walking, but that she agrees with everything else on the PAS-2000 completed 12-1-04.

7. Ms. Gue testified that during her visit, the claimant stood up and took her walker for a few steps and that she marked communication as Level 1-not impaired as she was able to understand the claimant and that the other Levels are Level 2 (impaired/understandable), Level 3 (understandable with aides), and Level 4 (inappropriate/none).

8. The areas of dispute with the PAS-2000 completed by Ms. Gue on 12-1-04 involve the areas of vacating the building in an emergency, bowel incontinence, walking, transferring, and medication (items #25, #26 f, h, and i, and #28).

9. The State Hearing Officer is convinced by the evidence and testimony that the claimant has additional deficits in the areas of vacating the building in an emergency and with requiring physical assistance with walking and transferring, but that the claimant does not meet a deficit in the areas of incontinence of bladder or administering medications. The State Hearing Officer accepted the testimony of Ms. _____ and Ms. _____ in regard to the claimant's inability to vacate the building in an emergency and with walking. The fact that the claimant could walk a few steps with a walker in the home on the day of Ms. Gue's visit does not mean that the claimant does not normally require physical assistance with walking. In the area of transferring, the State Hearing Officer observed the claimant's inability to get out of a chair without physical assistance and, while the PAS-2000 was completed over three (3) months prior to the hearing date, the State Hearing Officer is convinced that the claimant's condition would not have been markedly improved three (3) months ago. In addition, Ms. Gue testified that she marked the claimant as not impaired under the area of communication and,

Page 3

even though that area is not an area in which a deficit can be issued, the State Hearing Officer could not understand the claimant's when she spoke at all and finds that the claimant certainly should have been issued a finding of impaired but understandable in communication. In addition, testimony of Ms. _____ indicated that the claimant does have occasional incontinence and this item was marked as continent on the PAS-2000 by Ms. Gue. However, in the area of administering medications, the testimony showed that the claimant is capable of self-administering medication but chooses not to and a deficit will not be issued due to an individual refusing to take the medication. The claimant has five (5) deficits which does 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)

Page 4

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 Waiver Services Program and the claimant has only one (1) deficit.

VIII. DECISION

Based upon the evidence and testimony presented, I must reverse 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 12-1-04 (Exhibit #2) shows that the claimant has two (2) deficits in daily living in the areas of bathing and dressing. Testimony obtained during the hearing convinces the State Hearing Officer that the claimant is physically unable to vacate building in an emergency and that she needs physical assistance with walking and transferring and qualified for deficits in those three (3) areas. Since five (5) deficits must exist in order to be medically eligible and the claimant has five (5) deficits, the State Hearing Officer must reverse the action of WVMi to determine that the claimant is not medically eligible for the Title XIX Aged/Disabled Waiver Services Program. The State Hearing Officer finds that the claimant has 13 points from the PAS-2000 and from the findings of the hearing with points assigned as follows: item #23-2 points, item #25-1 point, item #26 b (1 point), c (1 point), f (1 point), h (2 points), I (2 points), m (1 point), item #28 (1 point), item #34 (1 point). Therefore, the claimant will be eligible for Level of Care B for three (3) hours per day or 93 hours per month. The claimant's case will be reevaluated in December, 2005.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.