



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, West Virginia 25704

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

April 13, 2005

[REDACTED]

Dear Ms. [REDACTED],

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 12, 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 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  
Michelle Wiley, WVMI  
MountainHeart Comm. Services

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

**NAME:** [REDACTED]

**ADDRESS:** [REDACTED]

**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 April 12, 2005 for [REDACTED].

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 April 12, 2005 on a timely appeal filed January 26, 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 Kay Ikerd from the Bureau for Senior Services (BOSS) and Michelle Wiley 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. [REDACTED], Claimant.
2. [REDACTED], Claimant's daughter.
3. [REDACTED], Claimant's homemaker.
4. Kay Ikerd, BOSS (testifying by speaker phone).
5. Michelle Wiley, R. N., WVMI (testifying 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 hearing request.
- " #3 Copy of PAS-2000 denied 10-4-04 (5 pages).
- " #4 Copy of potential denial letter 12-2-04 and additional documentation (7 pages).
- " #5 Copy of denial letter 1-13-04 (2 pages).

Exhibit #CI-1 Copy of fax from Dr. [REDACTED] 4-7-05 (2 pages).

## **VII. FINDINGS OF FACT**

1. The claimant was a recipient of services under the Title XIX Aged/Disabled Waiver (ADW) Services Program when a PAS-2000 was completed by Michelle Wiley, R. N. from West Virginia Medical Institute (WVMI) on 10-4-04(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 Michelle Wiley, R. N. from WVMI, on 10-4-04 and was denied for medical eligibility for the Title XIX ADW Program (Exhibit #3).
4. Findings of PAS-2000 by Michelle Wiley on 10-4-04 (Exhibit #3) reflected that the claimant had three (3) deficits in the activities of daily living in the area of bathing, dressing and grooming and that the claimant did not meet the criteria for medical eligibility for the Title XIX ADW Program as she did not have the required five (5) deficits.
5. Ms. Wiley testified that she reviewed the findings of the PAS-2000 with Ms. [REDACTED] and her homemaker [REDACTED] and that both were in agreement with the findings.
6. Testimony from Ms. [REDACTED] indicated that at the time of the PAS-2000, Ms. [REDACTED] had not confided in her and did not tell her that she had trouble with urinating, that she now is more apt to letting her help her, that she has improved a lot since being on the program, that she started working with her in June, 2004, but that she did not confide in her until recently, that she does the laundry but did not do Ms. [REDACTED] underwear.
7. Testimony from Ms. [REDACTED] indicated that the homemaker assists Ms. [REDACTED] with everything, that she has an incontinence problem, that her mind is not alert at times, and that her mother may have been guarded with Ms. Wiley because her [REDACTED] is Ms. Wiley's [REDACTED].
8. Testimony from Ms. Wiley indicated that her [REDACTED] is the claimant's [REDACTED] but that it is not a close relationship and did not affect her work, that the incontinence is stress incontinence and only occurs when the claimant sneezes or coughs, and that the claimant was in agreement with the findings of the PAS-2000.
9. The only area of dispute with the PAS-2000 completed by Ms. Wiley on 10-4-04 for which a deficit could be awarded involved the area of bladder incontinence (item #26 e). However, the incontinence appears to be stress incontinence rather than lack of control of the bladder and a deficit cannot be given.
10. The claimant has only three (3) deficits and does not 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)

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 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.

**IX. RIGHT OF APPEAL**

See Attachment.

**X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.