



**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

July 26, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 22, 2005. 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 Hearings 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 meet the medical criteria to be eligible for 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, Bureau for Senior Services  
Julia Foster, WVMH  
Community Nursing Services

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

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**Claimant,**

**v. Action Number:**

**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 fair hearing concluded on July 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 convened on July 22, 2005 on a timely appeal, filed February 9, 2005. It should be noted that the hearing was originally scheduled for May 19 and July 5, 2005 but was rescheduled initially at claimant's request and then at Department's request.

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

## II. PROGRAM PURPOSE:

The Program entitled Title XIX Aged/Disabled Wavier Services 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 a skilled nursing facility (if not for the waiver services).

### III. PARTICIPANTS:

1. \_\_\_\_\_, Claimant.
2. \_\_\_\_\_, Claimant's homemaker.
3. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
4. Julia Foster, West Virginia Medical Institute (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. QUESTIONS 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:**

##### **Department's Exhibits:**

- D-1 Copy of regulations (2 pages).
- D-2 Copy of hearing request received 2-9-05.
- D-3 Copy of PAS-2000 completed 12-29-04 (6 pages).
- D-4 Copy of potential denial letter dated 1-7-05 (2 pages).
- D-5 Copy of denial letter dated 2-4-05 (2 pages).
- D-6 Copy of additional documentation (3 pages).
- D-7 Copy of evaluation request.

##### **Claimants' Exhibits:**

- D-1 Copy of letter from [REDACTED] MD, 4-29-05 (objected to as untimely and not used).

#### **VII. FINDINGS OF FACT:**

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2000 was completed by Julia Foster of WVMI on 12-29-04 and was denied for medical eligibility.
- 2) The PAS-2000 completed by Ms. Foster on 12-29-04 determined that only three (3) deficits existed in the functional activities of being physically vacating the building in an emergency, bathing and grooming.
- 3) Ms. Foster testified that the claimant had no decubitus (item #24), that he could feed himself (item #26a), that he could dress himself (item #26b), that he had occasional

bladder incontinence (item #26e), that he had occasional bowel incontinence (item #26f), that he was oriented (item #26g), that he used assistive device for transferring (item #26h) and walking (item #26i), that he did not use a wheelchair in the home (item #26j), that he had some professional/technical needs but none which could be awarded a deficit (item #27), that he was capable of administering his medications (item #28), and that he had a total of three (3) deficits.

- 4) Ms. Foster testified that additional information was received within the two (2) week potential denial period but did not change the decision.
- 5) The claimant was notified of potential denial on 1-7-05 and of denial on 2-4-05 and requested a hearing on 2-9-05.
- 6) Ms. \_\_\_\_\_ testified that the claimant has to start dialysis but not at the time the PAS-2000 was completed and that he is more short-of-breath now.
- 7) The claimant testified that the doctor says he is going to get worse, that he uses an electric shaver to shave, and that he cannot fix food.
- 8) 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."

### VIII. CONCLUSIONS OF LAW:

- 1) Regulations in Section 570.1.b require that five (5) deficits exist in the major life areas and the claimant was determined to have only three (3) deficits on the PAS-2000 completed on 12-29-04 in the areas of physically being unable to vacate the building in an emergency, bathing, and grooming. The claimant did not provide any additional testimony or evidence which would qualify him for any additional deficits. The claimant does not meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program.

### IX. DECISION:

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.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 26th Day of July, 2005.**

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**Thomas M. Smith**  
**State Hearing Officer**