



05 BOR-4753

State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Building 6 Room 817B  
Charleston, WV 25305

Joe Manchin  
Governor

Martha Walker  
Secretary

December 21, 2005

Dear [REDACTED]

Attached is a copy of the findings of fact and conclusions of law for your hearing held May 4, 2005. Your Hearing request was based on the Department of Health and Human Resources' proposal/action to deny medical eligibility under the Aged and Disabled Waiver 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 specifies that your eligibility to participate in the program is determined by the number of points scored under certain Levels of Care Criteria.

The information which was submitted at the hearing revealed that you do not meet medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to deny your request for participation in the Aged and Disabled Waiver Program.

Sincerely,

State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
BoSS

**COPY**

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

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 May 4 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 May 4, 2005 on a timely appeal filed January 27, 2005.

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.

III. PARTICIPANTS

[REDACTED], Claimant  
[REDACTED], All Care Home/Community Services  
[REDACTED], Homecare worker  
Libby Boggess, BoSS  
Stacy Leadman, WVMI

Presiding at the hearing was Shawn A. Taylor, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether Mr. [REDACTED] met the medical eligibility requirements for the Aged and Disabled Waiver Program as of November 17, 2004.

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**

1. Copy of applicable regulations, including §570.1.b MEDICAL CRITERIA;
2. Copy of "Request for Hearing" dated January 18, 2005;
3. Copy of PAS-2000 completed by Stacy Leadman (4 pages);
4. Copy of letter dated December 20, 2004 from [REDACTED] MD;
5. Copy of "Notice of Decision" issued by WVMi on January 13, 2005;
6. Copy of "Potential Denial" issued by WVMi on December 7, 2004;
7. Copy of "Notification of Hearing" letter dated April 1, 2005.

**VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**FINDINGS OF FACT**

1. A PAS for [REDACTED] was completed by Stacy Leadman of WVMi on or about November 17, 2004, and concluded that there was only one "deficit," that being an inability to "vacate the building."
2. By letter dated January 13, 2005, [REDACTED] was informed by WVMi that he did not meet medical eligibility requirements for the Aged and Disabled Waiver Program, and as such, his application for Waiver services was denied.
3. [REDACTED] completed a "Request for Hearing" dated January 18, 2005, and was received by the WVDHHR Bureau for Medical Services on or about January 24, 2005.
4. A hearing was conducted in the DHHR offices in [REDACTED], West Virginia on May 4, 2005.
5. During the course of testimony, Stacy Leadman of WVMi testified that as of November 17, 2004, Mr. [REDACTED] qualified for one (1) total deficit point for No. 25 (physically unable to vacate the building).
6. During the course of testimony, Mr. [REDACTED] made the following statements; that he takes longer to bathe, groom, and dress; that he bathes himself; that he can cook meals in the microwave; and that he "don't need nursing home care."
7. [REDACTED], testifying on behalf of Mr. [REDACTED], stated the following: the claimant has shortness of breath, and needs rest periods with exertion; and that it takes the claimant a long time to perform activities.
8. [REDACTED] testifying on behalf of Mr. [REDACTED], stated the following: the claimant needs help; that she assists the

claimant 5 days per week, 3 hours per day; and that if the program application is denied, she will no longer be paid by [REDACTED] Co. Action to provide services to the claimant, nor will he receive a Medicaid card.

9. The December 20, 2004 letter from [REDACTED] [REDACTED], MD was considered, but did not provide any information relating to "deficits."
10. Neither the claimant nor any of his witnesses provided any additional testimony claiming or supporting additional "deficits."

#### **CONCLUSIONS OF LAW**

1. Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policies and Procedures Manual, 11-3-03, §570.1.b MEDICAL CRITERIA, states in pertinent part: An individual must have five deficits on the PAS to qualify medically for the ADW Program.

#### **VIII. DECISION**

Based upon the testimony adduced at the hearing, and in consideration of the written record, [REDACTED] **did not meet the eligibility requirements for the ADW Program.** Even if the testimony adduced by the claimant's witnesses was taken as true, the claimant would not have accumulated five (5) deficits. In fact, the Hearing Officer attempted to adduce additional testimony to identify additional deficits, if any. None were identified by the claimant or his witnesses.

#### **IX. RIGHT OF APPEAL**

See Attachment.

#### **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision. (Form IG-BR-46)

Form IG-BR-29.