



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

June 8, 2005

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 7, 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
Libby Boggess, BOSS
Michelle Wiley, WVMI
[REDACTED] CCIL
[REDACTED] Pro-Careers

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

_____,

Claimant,

Action Number: 05-BOR-5418

v.

**West Virginia Department of
Health & Human Resources,**

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 7, 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 June 7, 2005 on a timely appeal filed January 24, 2005. It should be noted that the hearing was originally scheduled for April 12 and April 26, 2005 but was rescheduled both times at the request of the claimant.

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 Libby Boggess 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. _____
2. _____
3. _____ CCIL Social Worker.
4. _____ Pro-Careers R.N.
5. _____, Claimant's friend.
6. Michelle Wiley, R. N., WVMI (participating by speaker phone).
7. Libby Boggess, Bureau for Senior Services (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

Department's Exhibits:

Exhibit #1 Copy of regulations (2 pages).

" #2 Copy of hearing request.

" #3 Copy of PAS-2000 denied 11-30-04 (5 pages).

" #4 Copy of potential denial letter 12-6-04 (2 pages).

" #5 Copy of additional documentation submitted (6 pages).

" #6 Copy of denial letter 1-13-05 (2 pages).

Claimant's Exhibits:

Exhibit #CI-1 Copy of letter from Thomas Belford, PA-C dated 4-7-05.

VII. FINDINGS OF FACT

1. The claimant was an active recipient of services under the Title XIX Aged/Disabled Waiver (ADW) Services Program when reevaluation of medical eligibility was completed by Michelle Wiley, R. N. from West Virginia Medical Institute (WVMI) on 11-30-04 and the claimant was determined not to meet the medical eligibility criteria (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. Findings of PAS-2000 by Michelle Wiley on 11-30-04 (Exhibit #3) reflected that the claimant had two (2) deficits in the activities of daily living in the areas of vacating a building in an emergency 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 the claimant, her husband, and the homemaker [REDACTED] and that they were in agreement with the findings.

6. Testimony from the claimant indicated that she had no disagreement with the findings of the PAS-2000 explained by Ms. Wiley but that she needs help.

7. Testimony from Mr. _____ indicated that he has to help his wife get up from the couch and that she gets confused often.

8. Testimony from Ms. [REDACTED] indicated that the claimant has periods of confusion and disorientation, that she needs assistance with bathing, dressing, and grooming, that she has observed her needing assistance with walking and transferring, that there is a question whether she understood the findings by Ms. Wiley and that her agency discovered that the homemaker [REDACTED] was only showing up for work for 30 minutes and was leaving and did not know the claimant's true condition, and that there have been changes in her condition since the PAS was completed.

9. Testimony from Ms. _____ indicated that she makes sure that the claimant takes her medication, that she has bad spells which come and go, that she has helped her get dressed, that the claimant cannot hold up her hands to wash her hair, that her husband helps her bathe, that she has to help her get up from the table, and that she gets confused often.

10. Testimony from Ms. Boggess indicated that the claimant's condition appears to getting worse but that the PAS-2000 speaks for itself, that Ms. Wiley recorded that she was told the claimant prepares simple foods, bathes and dresses herself and does not need any assistance with bathing or dressing, that a deficit was given for grooming as the claimant has difficulty washing her hair, that the claimant transferred by using the arms of the couch and ambulated independently, and that the findings of the PAS-0200 were accurate.

11. The areas of dispute with the PAS-2000 completed by Ms. Wiley on 11-30-04 for which a deficit could be awarded involve the areas of bathing, dressing, walking, and transferring. The claimant testified that she had no disagreements with the findings of the PAS-2000 but Ms. [REDACTED] testified that she also needed assistance with bathing, dressing, walking, and transferring. Ms. [REDACTED] testified that the claimant needed assistance with dressing and bathing and with transferring. While the State Hearing Officer understands that the homemaker present during the assessment on 11-30-04 may not have been aware of the claimant's needs, the State Hearing Officer finds that the claimant and her husband agreed with the findings of Ms. Wiley and her recordings of her findings were specific in regard to bathing, dressing, transferring, and ambulating. The claimant cannot be awarded any additional deficits.

12. The claimant has only two (2) 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 Waiver Services Program and the claimant has only two (2) deficits.

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.