



**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

August 25, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 23, 2006. 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 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 reverse 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
Libby Boggess, Bureau for Senior Services
[REDACTED], WVMH
Nisar Kalwar, Department's Attorney
Benita Whitman, Claimant's Attorney
Catholic Community Services

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

Claimant,

Action Number: 05-BOR-866

**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 August 23, 2006 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 August 23, 2006 on a timely appeal filed January 17, 2006 after it was initially scheduled for April 20, 2006 but was rescheduled at claimant'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 daughter.

3. _____, Claimant's caregiver.
4. _____, R. N., Lincoln Co. Opportunity Council.
5. _____, Casemanager, Catholic Community Services.
6. Benita Whitman, Claimant's Attorney.
7. Nisar Kalwar, Department's Attorney (participating by speaker phone).
8. Libby Boggess, Bureau for Senior Services (participating by speaker phone).
9. _____, 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:

Chapter 500 Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03, Section 570.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D1 Copy of regulations (8 pages).
- D2 Copy of PAS-2005 12-1-05 (4 pages).
- D3 Copy of potential denial letter dated 12-12-05 (2 pages).
- D4 Copy of denial letter dated 1-10-06 (2 pages).
- D5 Copy of letter from _____ M. D. dated 12-14-05.

Claimant's Exhibits:

- CI-1 Copy of RN Assessment Forms dated 10-13-05, 11-3-04, 7-15-04 (9 pages).
- CI-2 Copy of Plan of Care/Homemaker Worksheet dated Oct., 2005.

(It should be noted that Mr. Kalwar objected to the RN Assessment dated 7-15-04 in Exhibit CI-1 but the objection was overruled. It should also be noted that both Mr. Kalwar and Ms. Whitman had provided other documents received by the State Hearing Officer on 8-10-06 and 8-17-06 respectively which were not entered into evidence and will not be considered. Those documents were marked as Exhibit D-6 and CI-3 for identification purposes only).

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient for the Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2005 was completed by _____ of WVMI on 12-1-05 and was denied for medical eligibility (Exhibit D2).

- 2) The PAS-2005 completed by Ms. [REDACTED] on 12-1-05 determined that only three (3) deficits existed in the functional activities of bathing, dressing and grooming.
- 3) Ms. Boggess testified about the regulations (Exhibit #1).
- 4) Ms. [REDACTED] testified about the PAS-2005 completed 12-1-05 (Exhibit D2). Ms. [REDACTED] testified that she awarded three (3) deficits in the areas of bathing, dressing, and grooming,
- 5) The claimant was notified of potential denial on 12-12-05 (Exhibit D3) and of denial on 1-10-06 (Exhibit D4) and a hearing request was received by the Bureau for Medical Services on 1-17-06, by the Board of Review on 3-7-06, and by the State Hearing Officer on 3-9-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of walking and transferring.
- 7) In the areas of transferring and walking, Jamie [REDACTED] testified that she has observed the claimant in her home for several years, that she completed the RN assessment forms (Exhibit C1-1) and marked that assistance with transferring and ambulation were to be given when needed, that the claimant is unsteady when she walks and needs someone to assist her more often than not, that her assessments dated 11-3-04 and 7-15-04 were marked the same, that the Plan of Care dated October, 2005 was marked to show supervision and assistance as needed for transferring and ambulation, that she was present when the PAS-2005 was completed and that Ms. [REDACTED] asked Ms. [REDACTED] to demonstrate transferring and walking and the caregiver helped her out of the chair but Ms. [REDACTED] asked her to do it by herself. Ms. [REDACTED] testified that she has had to help her mother get up from the chair frequently, that she was present during the assessment by Ms. [REDACTED] and her mother took a few steps, that she gets short of breath just walking to the bathroom, that she has fallen three (3) times. Ms. [REDACTED] testified that she has trouble walking due to her breathing, that the caregiver helps her up, that she has fallen three (3) times and had to have help getting up, and that her walking is unsteady.
- 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. Decubitus - Stage 3 or 4

B. Unable to vacate a building-a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alheimers, or related condition. (Item 25, I and 33, on the PAS-2005).

C. 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 total incontinent-defined as when the recipient has no control of bowel or bladder functions at any time.)

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. 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. (Item 26 on the PAS-2005)

E Individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube, or eye by some one other than the recipient at all times."

9) The areas of dispute in regard to deficits involved walking and transferring. The State Hearing Officer finds that the claimant requires one-person assistance at times with walking. The evidence and testimony show that the claimant was able to walk without assistance on the day of the assessment but this does not preclude the fact that she requires one-person assistance (Level III) at times with walking. The regulations do not state that the one-person assistance be required at all times. Therefore, an additional deficit is awarded the claimant in the area of walking. In addition, since a finding of Level III is awarded to the claimant in the area of walking, the claimant qualifies for an additional deficit for vacating the building. The State Hearing Officer finds that the claimant requires one-person assistance at times with transferring. The evidence and testimony show that the claimant was able to transfer with the walker on the day of the assessment but this does not preclude the fact the she requires one-person assistance at times with transferring. The regulations do not state that the one-person assistance be required at all times. Therefore, an additional deficit is awarded the claimant in the area of transferring.

10) The State Hearing Officer finds that the claimant qualifies for three (3) additional deficits in the areas of walking, transferring, and vacating the building. The finding by the State Hearing Officer of Level III for items #25 h and I qualifies the claimant for an additional point in each area. The claimant also qualifies for an additional point for vacating the building. The claimant qualifies for a total of three (3) additional points.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations in Section 570.1.b require that five (5) deficits exist in the major life areas to meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program.
- 2) The claimant was determined to have only three (3) deficits on the PAS-2005 completed on 12-1-05 in the areas of bathing, dressing and grooming.
- 3) The areas of dispute involved walking and transferring. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant qualified for additional deficits in the areas of walking and transferring. In addition, since the claimant was awarded a Level III finding in the area of walking, she also qualified for a deficit in the area of vacating the building.
- 4) The claimant qualifies for six (6) deficits and meets the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as five (5) deficits are required.

IX. DECISION:

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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of August, 2006.

Thomas M. Smith
State Hearing Officer