



**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

April 19, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 14, 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
Kay Ikerd, Bureau for Senior Services
[REDACTED], WVMI
[REDACTED], Pro-Careers

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

_____,
Claimant,

v.

Action Number: 06-BOR-1067

**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 April 14, 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 April 14, 2006 on a timely appeal filed February 6, 2006.

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. _____ R. N. Supervisor, Pro-Careers.
3. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).

4. [REDACTED] 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:

- D-1 Copy of regulations (8 pages).
- D-2 Copy of hearing request received 2-6-06 (2 pages).
- D-3 Copy of PAS-2005 completed 12-21-05 (8 pages).
- D-4 Copy of potential denial letter dated 1-3-06 (2 pages).
- D-5 Copy of letter from [REDACTED], M. D. dated 12-20-05.
- D-6 Copy of potential denial letter 1-3-06 (2 pages).
- D-7 Copy of denial letter 1-31-06 (2 pages).
- D-8 Copy of evaluation request.

Claimant's Exhibits:

None.

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 [REDACTED] of WVMI on 12-21-05 and was denied for medical eligibility (Exhibit #3).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 12-21-05 determined that only three (3) deficits existed in the functional activities of bathing, dressing, and grooming.
- 3) Ms. Ikerd testified about the regulations (Exhibit #1).
- 4) Ms. [REDACTED] testified that she completed the PAS-2005 on 12-21-05, that she initially determined that the claimant met a deficit with transferring but after conferring with her supervisor, she was told that if the claimant could ambulate or transfer at all, she must be assigned Level II which is supervised or assistive device, that the first potential

denial letter issued (Exhibit #4) indicated four (4) deficits but the second one (Exhibit #5) indicated only three (3) after the deficit for transferring was removed.

- 5) The claimant was notified of potential denial on 12-23-05 (Exhibit #4) and additional information was received (Exhibit #D-5). A second potential denial letter was issued on 1-4-06 (Exhibit #D-6), a denial letter was issued on 1-31-06 (Exhibit #7) and a hearing request was received by the Bureau for Medical Services on 2-6-06 (Exhibit #2), by the Board of Review on 3-1-06, and by the State Hearing Officer on 3-6-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of eating and transferring.
- 7) Testimony from the claimant revealed that she does not eat food which has to be cut up, that she has arthritis in her hands and fingers and cannot open bottles, including medicine bottles, that she has had surgery on both legs, a knee transplant, open heart surgery, back surgery, a stint in both kidneys, and surgery on both sides of her neck.
- 8) Testimony from the claimant's witness indicated that the claimant was initially given a Level 3 for transferring and that she cannot open jars or pour food.
- 9) The areas of dispute involved eating and transferring. However, after reviewing the PAS-2005 completed 12-21-05, the State Hearing Officer also determined that the area of walking should be an area of dispute, based on the recording of the assessment by Ms. [REDACTED].
- 10) In regard to the area of eating, the claimant testified that she does not eat foods which have to be cut up as she cannot cut up food. The overall comments of Ms. [REDACTED] indicated that she asked the homemaker two (2) times about whether the claimant needed assistance with cutting up food and was told no both times. The overall comments by Ms. [REDACTED] indicated that the claimant told her that she did not eat foods which have to be cut up. Thus, an additional deficit cannot be awarded for eating.
- 11) In regard to transferring, Ms. [REDACTED] originally awarded the claimant with a Level III finding after determining that she required one-person assistance with transferring. Ms. [REDACTED]'s overall comments on the PAS-2005 indicated that the homemaker told her that the claimant needed one-person assistance with transferring at least 90-95% of the time. Ms. [REDACTED] testified that after discussing the issue with her supervisor, since the claimant could transfer at times without one-person assistance, a Level II finding (supervised/assistive device) was appropriate and this did not count as a deficit. The State Hearing Officer finds that the regulations do not state that one-person assistance is required 100% of the time in order to be assigned a Level III finding. Thus, the claimant qualifies for an additional deficit in transferring.
- 12) In regard to walking, while the claimant and her witness did not testify about the area of walking, the State Hearing Officer reviewed the overall comments of Ms. [REDACTED] from the PAS-2005 and determined that the claimant requires one-person assistance with walking. Ms. [REDACTED] recorded that "client ambulated in the home with HM holding to her as she first started ambulating" and that "HM then stood beside of client as she ambulated over to the bar in the kitchen. Client held to the bar when she got over to the bar. Client then turned around and ambulated slowly back over to the dining room

table. Client's gait was slow and unsteady". The recording goes on to state that when the HM was asked if she assists client with walking in the home, the HM stated that "She has good days and bad days. Some days she needs more help than other days". The State Hearing Officer finds that the claimant does require one-person assistance in the home with walking and is awarding an additional deficit for the area of walking.

- 13) Since the claimant was awarded a Level III (one-person assistance) finding for walking, she also qualifies for a deficit for vacating the building.
- 14) 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."

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 12-21-05 in the areas of bathing, dressing, and grooming.
- 3) The areas of dispute involved eating, walking, and transferring. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant qualified for a deficit in the areas of transferring and walking and two (2) additional deficits are awarded for these areas. Since the claimant was awarded a Level III finding by the State Hearing Officer for walking, she also qualified for a deficit for vacating the building. The State Hearing Officer determined that the PAS-2005 completed 12-21-05 correctly assessed the claimant in the area of eating.
- 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. The claimant qualifies for 18 points (7 under item #23, 9 under item #25, 1 for vacating the building, and 1 for item #33) and Level of Care C for four (4) hours per day or 124 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of April, 2006.

**Thomas M. Smith
State Hearing Officer**