



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

September 1, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 30, 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 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 of Senior Services
_____, WVMI
Nisar Kalwar, Department's Attorney
Hoyt Glazer, Claimant's Attorney
_____, Allied Nursing

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

_____,

Claimant,

v.

Action Number: 06-BOR-1243

**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 30, 2006 for D_____. 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 30, 2006 on a timely appeal filed January 3, 2006.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. It should also be noted that the hearing was originally scheduled for May 3, June 26, and August 22, 2006 but was rescheduled originally by the State Hearing Officer, then at the request of the claimant, and finally at the Department's request.

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. [REDACTED], Claimant.
2. [REDACTED], Casemanager, Allied Nursing Services.
3. [REDACTED] Claimant's Homemaker, Loved Ones.
4. Hoyt Glazer, Claimant's Attorney.
5. Kay Ikerd, Bureau of Senior Services (participating by speaker phone).
6. [REDACTED], West Virginia Medical Institute.(participating by speaker phone).
7. Nisar Kalwar, Department's Attorney, (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:

- #1 Copy of regulations (8 pages).
- #2 Copy of PAS-2005 dated 11-22-05 (5 pages).
- #3 Copy of potential denial letter dated 12-2-05 (2 pages).
- #4 Copy of denial letter dated 12-18-05 (2 pages).

Claimant's Exhibits:

None.

It should be noted that other documents were received from both parties by the State Hearing Officer prior to the hearing but were not entered as evidence. These documents are marked as Exhibit #NA for identification purposes only. In addition, duplicate copies of the Department's exhibits were provided by fax and regular mail and are marked as Exhibit #DU for identification purposes only.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of benefits under 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 11-22-05 and was denied for medical eligibility (Exhibit #2).
- 2) The PAS-2005 completed by [REDACTED] on 11-22-05 determined that only four (4) deficits existed in the functional activities of eating, bathing, dressing and grooming.

- 3) Ms. Ikerd testified about the regulations (Exhibit #1).
- 4) ██████ testified about the PAS-2005 completed 11-22-05 (Exhibit #2). ██████ testified that she awarded four (4) deficits in the areas of eating, bathing, dressing, and grooming and both parties stipulated to those deficits.
- 5) The claimant was notified of potential denial on 12-2-05 (Exhibit #3) and of denial on 12-22-05 (Exhibit #4) and a hearing request was received by the Bureau for Medical Services on 1-3-06, by the Board of Review on 3-17-06, and by the State Hearing Officer on 3-22-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the area of walking. (It should be noted that Mr. Glazer questioned the claimant about the area of medication administration but did not argue or provide evidence that a deficit should be awarded in that area.)
- 7) In the area of walking, Ms. _____ testified that ██████ did not ask her if she needed one-person assistance with walking, that she does need help with walking due to dizzy spells, that she needs someone or something to hold on to, and that she could vacate the building if someone helped her. ██████ testified about medication administration but was not the claimant's homemaker at the time of the assessment. ██████ testified that ██████ from Loved Ones, ██████ from Allied Nursing, and the homemaker named ██████ were present during the assessment, that they agreed with the findings, that the claimant is alone 20 hours a day and is able to walk in to the kitchen to get her medications, go to the bathroom, and go to bed at night, that the claimant told her she could transfer by pushing off furniture, that she reviewed her findings by reading them to the parties present but did not show them anything in writing, that nothing in her comments on page 4 indicate that she asked ██████ or Ms. ██████ about walking criteria, and that the claimant told her she could tell what medications to take by the colors although she could not read the labels.
- 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)
- Continance - 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 area of dispute in regard to deficits involved the area of walking. The State Hearing Officer finds that sufficient evidence or testimony was not provided to show that one-person assistance with walking was required by the claimant at the time the PAS-2005 was completed. The claimant testified that she needed help with walking at the time of the assessment and that [REDACTED] did not ask her if she needed one-person assistance with walking. However, there was no corroborating evidence or testimony to support the claimant's testimony. [REDACTED] comments on page 4 of the assessment show that the claimant informed her that she ambulates with a cane at times but most of the time holds on to things and did not use a wheelchair in the home. [REDACTED] testified that the claimant is alone most of the time and is able to ambulate during those times. It is the finding of the State Hearing Officer that the preponderance of evidence and testimony do not support a finding that the claimant requires one-person assistance (Level III) with walking. Therefore, an additional deficit cannot be awarded in the area of walking. (It should be noted that the claimant testified that she could vacate the building if someone helped her but the area of vacating the building cannot be addressed as the claimant did not have a Level III finding in the area of walking or orientation.

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 four (4) deficits on the PAS-2005 completed on 11-22-05 in the areas of eating, bathing, dressing and grooming.
- 3) The area of dispute involved walking. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant did not qualify for an additional deficit in the area of walking. The State Hearing Officer determined that the PAS-2005 completed 11-22-05 correctly assessed the claimant in the functional areas and that she met the criteria for only four (4) deficits.
- 4) The claimant does not meet 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 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 1st Day of September, 2006.

**Thomas M. Smith
State Hearing Officer**