



**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

May 31, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 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
Kathy Zuspan, Bureau for Senior Services
[REDACTED], WVMi

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

____,

Claimant,

v.

Action Number: 06-BOR-1249

**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 May 30, 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 May 30, 2006 on a timely appeal, filed February 14, 2006. It should be noted that the hearing was originally scheduled for April 20, 2006 but was rescheduled by the State Hearing Officer.

It should be noted here that the claimant's benefits have been denied 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 son.
3. _____, Claimant's daughter.
4. Kathy Zuspan, Bureau for Senior Services (participating by speaker phone).
5. _____, 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:

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:

- D-1 Copy of regulations (8 pages).
- D-2 Copy of PAS-2005 completed 12-15-05 (5 pages).
- D-3 Copy of hearing request 2-14-06.
- D-4 Copy of potential denial letter dated 12-22-05 (2 pages).
- D-5 Copy of additional information (3 pages).
- D-6 Copy of revised PAS-2005 dated 12-15-05 (6 pages).
- D-7 Copy of denial letter dated 2-1-06 (2 pages).
- D-8 Copy of evaluation request (3 pages).

Claimants' Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was an applicant for the Title XIX Aged/Disabled Waiver Services Program when a PAS-2005 was completed by _____ of WVMi on 12-15-05 and was denied for medical eligibility as only three (3) deficits existed (Exhibit #D-2).
- 2) The claimant was notified of potential denial on 12-22-05 (Exhibit #D-4), additional information was received (Exhibit #D-5) and the claimant was awarded an additional deficit in the area of bladder incontinence, resulting in four (4) deficits and a letter of denial was sent on 2-1-06 (Exhibit #D-6) and a hearing request was received on 2-14-06 (Exhibit #D-3).
- 3) The State Hearing Officer received the hearing request on 3-28-06.

- 4) Ms. [REDACTED] testified about the PAS-2005 completed on 12-15-05 (Exhibit #D-2) which determined that the claimant had deficits in the major life activities of bathing, dressing, and grooming but the three (3) deficits did not qualify the claimant for medical eligibility for the ADW Program as five (5) deficits are required. Ms. [REDACTED] testified that additional information was received from Dr. [REDACTED] and an additional deficit was awarded for bladder incontinence but the claimant still did not have the required five (5) deficits.
- 5) Ms. Zuspan testified about the regulations (Exhibit #D-1).
- 6) Mr. [REDACTED] testified that his mother can feed herself but needs help with bathing, dressing, and grooming, that her bowel problem comes and goes, that she needs help with transferring and walking, that she loses balance and falls, that she now has a wheelchair, that she has dementia and is disoriented at times, that she has a hard time distinguishing between day and night, that her medication has to be set up for her, that she could not vacate the building as someone would need to guide her, that she does require assistance getting up out of a chair but may have been able to do so at the time the PAS-2005 was completed.
- 7) Ms. [REDACTED] testified that she observed the claimant ambulating and transferring initially without the walker.
- 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. #24: Decubitus - Stage 3 or 4 (Item 24 on PAS-2005)

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, Alzheimers, or related condition (Item 25, I and 33, on the PAS-2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS-2005).

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 medication 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 involved orientation, walking, transferring, and vacating the building. The evidence and testimony show that at the time the PAS-2005 was completed, the claimant had intermittent disorientation and that Mr. ____ confirmed that his mother is disoriented only at times. Thus, an additional deficit cannot be awarded in the area of orientation as the claimant is not totally disoriented. In the areas of walking and transferring, the claimant was awarded a Level II finding on the PAS-2005 due to requiring supervision or assistive device to walk and transfer. Mr. ____ testified that his mother may

have been able to transfer without assistance at the time the PAS-2005 was completed. Ms. [REDACTED] testified that she observed the claimant ambulating and transferring without any assistance. Thus, an additional deficit cannot be awarded in the areas of walking and transferring. In the area of vacating the building, the regulations require that a Level III finding exist in either the area of walking or in the area of orientation before a deficit can be awarded for vacating the building. The claimant was awarded a Level II finding in the areas of walking and orientation. Thus, an additional deficit cannot be awarded for vacating the building. The claimant has a total of four (4) deficits.

VIII. CONCLUSIONS OF LAW:

Regulations in Section 570.1.b require that five (5) deficits exist in the major life areas and the claimant was determined to have only four (4) deficits on the PAS-2005 completed on 12-15-05 in the areas of bathing, dressing, grooming, and bladder incontinence. The areas of dispute involved orientation, walking, transferring, and vacating the building and the State Hearing Officer determined that the claimant did not qualify for an additional deficit in any of those four (4) areas. The claimant meets the medical criteria for four (4) deficits but 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 31st Day of May, 2006.

Thomas M. Smith
State Hearing Officer