



**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

July 3, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 29, 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], WVMI
Nisar Kalwar, Department's Attorney
Benita Whitman, Claimant's Attorney
SCAC

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

____,

Claimant,

v.

Action Number: 06-BOR-1482

**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 June 29, 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 June 29, 2006 on a timely appeal filed March 22, 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. _____, Claimant's daughter.

4. Benita Whitman, Claimant's Attorney.
5. Nisar Kalwar, Department's Attorney (participating by speaker phone).
6. Libby Boggess, Bureau for Senior Services (participating by speaker phone).
7. [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:

- #1 Copy of regulations (8 pages).
- #2 Copy of evaluation request.
- #3 Copy of PAS-2005 completed 12-22-05 (9 pages).
- #4 Copy of potential denial letter dated 12-28-05 (2 pages).
- #5 Copy of denial letter dated 1-16-06 (2 pages).

Claimant's Exhibits:

- #CI-1 Copy of RN Assessment Form dated 9-23-05 (5 pages).
- #CI-2 Copy of RN Assessment Form dated 6-6-05 (5 pages).
- #CI-3 Copy of client contact form dated 12-8-05 (2 pages).

(It should be noted that Mr. Kalwar objected to Exhibit #CI-1 as an untimely document but the objection was overruled. It should also be noted that Ms. Whitman had provided two (2) documents on June 23, 2006 related to drug information which were not entered into evidence and will not be considered. Those documents were marked as Exhibit #CI-4 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 [REDACTED] of WVMI on 12-22-05 and was denied for medical eligibility (Exhibit #3).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 12-22-05 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 12-22-05 (Exhibit #3). Ms. [REDACTED] testified that she awarded three (3) deficits in the areas of bathing, dressing, and grooming, that she became aware of the claimant's Alzheimer's when she reviewed her medications, that she tried to call someone at WVMI to ask if she should continue with the interview but was unable to reach anyone and continued with the interview, that she called the claimant's contact person, Ms. _____, after the assessment was completed and reviewed it with her and that the claimant's son, _____, was present during the interview, that she did not mark that the claimant had pain or diabetes on item #23 because it was not on the referral and there was no medication being taken other than advil, and that the regulations listed in Section 570 do not state that the item must be on the referral or that a prescription medication must be prescribed before the item can be marked.
- 5) The claimant was notified of potential denial on 12-28-05 (Exhibit #4) and of denial on 1-16-06 (Exhibit #5) and a hearing request was received by the Bureau for Medical Services on 3-22-06, by the Board of Review on 4-11-06, and by the State Hearing Officer on 5-1-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of walking, transferring, eating, and medication administration. In addition, testimony on behalf of the claimant indicated that she takes medication for Alzheimer's and that the claimant's responses to Ms. [REDACTED] on the PAS-2005 may not have been accurate due to her confusion and forgetfulness.
- 7) In the area of walking, Ms. [REDACTED] testified that the homemaker assists the claimant with walking. Ms. _____ testified that she has had to help the claimant with walking and that she takes 2-3 steps to get to things to hold on to. Ms. [REDACTED] testified that the claimant answered the door, walked back to the bedroom to get a robe, and walked back to the living room. Ms. [REDACTED] indicated on the PAS-2005 that the claimant told her that she required one-person assistance at times with walking.
- 8) In the area of transferring, Ms. [REDACTED] testified that the homemaker assists the claimant with transferring. Testimony from Ms. _____ revealed that she has had to help the claimant with transferring and that the claimant wobbles and uses walls and tables to transfer. Ms. [REDACTED] indicated in the PAS-2005 that the claimant stood up from her chair several times by pushing off with moderate difficulty.
- 9) In the area of eating, Ms. [REDACTED] testified that the homemaker sometimes has to cut up meat due to claimant having pain and a past wrist fracture. Ms. _____ testified that since the claimant's wrist surgery, she cannot cut up meat, especially hard meat, and that she has had to cut up meat for her. Ms. [REDACTED] testified that the claimant informed her that she could cut up her food.
- 10) In the area of medication administration, Ms. [REDACTED] testified that during her visit on 12-8-05, the claimant had pills in the bottom of the container which she did could not identify and did not remember if she had taken. Ms. _____ testified that she does not recall what Ms. [REDACTED] said to her about medication administration. Ms. [REDACTED] indicated on the PAS-2005 that the claimant told her she sets up her medications at times in the

organizer, that she obtains medication from the bottles if not in an organizer, and that she can read the bottles.

- 11) 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."

12) The areas of dispute in regard to deficits involved walking, transferring, eating, and medication administration. The State Hearing Officer finds that the claimant requires one-person assistance at times with walking. The regulations do not state that the one-person assistance (Level III) 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 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. The State Hearing Officer finds that the claimant requires physical assistance with eating due to not being able to cut up her meat. While the claimant informed Ms. [REDACTED] that she could cut up her food, the claimant's response may not have been reliable based on Alzheimer's and the claimant's representative, Ms. _____, should have been present during the interview rather than being questioned over the telephone after the assessment with the claimant was completed. Therefore, an additional deficit is awarded the claimant in the area of eating. The State Hearing Officer finds that, although the claimant may have difficulty with medication administration due to the Alzheimer's, there was no testimony provided during the hearing to show that she required medication to be placed in her hand, mouth, tube or eye at all times. Therefore, an additional deficit cannot be awarded to the claimant in the area of medication administration.

13) The State Hearing Officer finds that the claimant qualifies for Level of Care C in the amount of four (4) hours per day or 124 hours per month. The Level of Care C is based on the following points: item #23: 6 points, including additional points awarded by the State Hearing Officer for Pain (h) and Diabetes (i); item #25: 10 points, including an additional point for

Eating (a) and two (2) additional points for Transferring (h) and Walking (i); 1 point for Alzheimer's (item #33), and 1 point for vacating the building. Total of 18 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 12-22-05 in the areas of bathing, dressing and grooming.
- 3) The areas of dispute involved walking, transferring, eating, and medication administration. 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, transferring, and eating. 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. The State Hearing Officer determined that the PAS-2005 completed 12-22-05 correctly assessed the claimant in the area of medication administration.
- 4) The claimant qualifies for seven (7) 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 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 3rd Day of July, 2006.

**Thomas M. Smith
State Hearing Officer**