



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 5, 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
[REDACTED], MountainHeart Comm. Services

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

_____,

Claimant,

v.

Action Number: 06-BOR-1725

**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 April 17, 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. _____, Claimant's co-homemaker.
3. [REDACTED] Claimant's co-homemaker (did not testify).

4. [REDACTED] Claimant's niece.
5. [REDACTED], MountainHeart Comm. Services, casemanager.
6. Libby Boggess, Bureau for Senior Services (participating by speaker phone).
7. [REDACTED], WVMi R. N.

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 hearing request received 4-17-06 (2 pages).
- 3 Copy of PAS-2005 completed 2-15-06 (8 pages).
- 4 Copy of potential denial letter dated 2-22-06 (2 pages).
- 5 Copy of additional documentation submitted (6 pages).
- 6 Copy of PAS-2005 with additional documentation (5 pages).
- 7 Copy of denial letter 4-4-06 (2 pages).
- 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 2-15-06 and was denied for medical eligibility (Exhibit #3).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 2-15-06 determined that only four (4) deficits existed in the functional activities of eating, bathing, dressing, and grooming.
- 3) Ms. Boggess testified about the regulations (Exhibit #1).
- 4) Ms. [REDACTED] testified about her finding on the PAS-2005 completed 2-15-06.

- 5) The claimant was notified of potential denial on 2-22-06 (Exhibit #4), additional information was received from ██████████ CFNP and ██████████, M.D. (Exhibit #5) and was considered by Ms. ██████████ (Exhibit #6) but did not change the number of deficits, a denial letter was issued on 4-4-06 (Exhibit #7) and a hearing request was received by the Bureau for Medical Services on 4-17-06 (Exhibit #2), by the Board of Review on 5-19-06, and by the State Hearing Officer on 6-1-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of transferring, walking, and dementia. Ms. ██████████ testified that the claimant has to have help transferring, that she has osteoarthritis and osteoporosis, that she told Ms. ██████████ she has pain in her spine, that she cannot take pain medication due to allergic reaction, that the family helps her get up and down although not 100% of the time, that she cannot use a bathtub because she got stuck in it one time, that she cannot get up without one or two people helping her, that she has signs of dementia, that it is worse in the mornings and evenings and she is undergoing testing for dementia. Ms. ██████████ testified that the claimant has shown symptoms of dementia the last 1 1/2 to 2 years and that she cannot use her wheelchair in her home. Ms. ██████████ testified that she sees the claimant every day and that her comprehension has been affected and that she gets confused and has for the last 1 1/2 years.
- 7) Ms. ██████████ testified that she observed the claimant ambulating and transferring with a cane, that the homemaker told her to use the cane and the claimant said she did not like to use it all the time, that the claimant held onto furniture to ambulate, that she pushed off the chair with moderate difficulty to transfer. Ms. Boggess testified that dementia is not a deficit and that Ms. ██████████ observed the claimant walking and transferring.
- 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 involved walking and transferring. (The State Hearing Officer notes that Ms. [REDACTED] testified that dementia was an area of dispute. However, while dementia can be

considered in relation to other deficits, dementia is not a qualifying deficit.) The State Hearing Officer finds that the claimant does require one-person assistance with walking and transferring. Ms. [REDACTED] testified that she witnessed the claimant ambulating and transferring with the use of a cane and by pushing off the chair. Ms. [REDACTED] awarded the claimant a Level II (supervised-assistive device) finding. However, testimony provided on behalf of the claimant during the hearing convinced the State Hearing Officer that the claimant does at times require one-person assistance with walking and transferring. The regulations provided as evidence (Exhibit #1) do not state that the one-person assistance must be at all times. Therefore, the State Hearing Officer is awarding a deficit for walking and transferring. The State Hearing Officer finds that an additional deficit is also awarded in the area of vacating the building since the claimant was awarded a Level III finding in the area of walking.

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 2-15-06 in the areas of eating, 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 an additional deficit in the areas of walking and transferring and also in vacating the building by virtue of a Level III finding in the area of walking.
- 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 20 points (9 under item #23, 10 under item #25, 1 for vacating the building) for 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 5th Day of July, 2006.

**Thomas M. Smith
State Hearing Officer**