



**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

June 28, 2006

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 27, 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] CCIL

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

____,

Claimant,

v.

Action Number: 06-BOR-1919

**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 27, 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 27, 2006 on a timely appeal filed April 14, 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 homemaker.
3. _____, CCIL casemanager.

4. Kay Ikerd, Bureau for Senior Services (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 hearing request received 4-14-06 (2 pages).
- 3 Copy of PAS-2005 completed 1-26-06 (5 pages).
- 4 Copy of potential denial letter dated 2-22-06 (2 pages).
- 5 Copy of additional documentation submitted (2 pages).
- 6 Copy of PAS-2005 with additional documentation (6 pages).
- 7 Copy of denial letter 4-4-06 (2 pages).
- 8 Copy of evaluation request (2 pages).

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 WVMJ on 1-26-06 and was denied for medical eligibility (Exhibit #3).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 1-26-06 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) Ms. [REDACTED] did not participate in the hearing. A request was received from Ms. Ikerd to reschedule the hearing on 6-12-06 and the State Hearing Officer denied the request as the reason was based on Ms. [REDACTED] having assessments scheduled the same day of the hearing.

- 5) The claimant was notified of potential denial on 2-22-06 (Exhibit #4), additional information was received from Dr. [REDACTED] (Exhibit #5) and was considered by Ms. [REDACTED] (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 4-14-06 (Exhibit #2) and by the State Hearing Officer on 5-19-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of incontinence, walking, transferring, medication administration. Ms. [REDACTED] testified that the claimant does not know when he needs to go the bathroom, that she took the claimant to the bathroom and he urinated while Ms. [REDACTED] was there but she told Ms. [REDACTED] that he did not know when he needed to go and had to be told to go the bathroom. Ms. [REDACTED] testified that she takes the pills out of the pillbox and puts them in the claimant's hand and that she has to assist him with walking and transferring. Ms. [REDACTED] testified that the claimant is totally incontinent since he does not know when he needs to go, that the PAS-2005 showed on page 4 that he required one-person assistance in getting to the bathroom when Ms. [REDACTED] was there, and that he cannot take his medications by himself.
- 7) The PAS-2005 reflected that that Ms. [REDACTED] was informed by Ms. [REDACTED] that the claimant uses the toilet if someone is there to assist him and that at times, he is unable to tell her when he needs to urinate or defecate and that the client urinated during the visit with the homemaker taking him to the bathroom. Ms. [REDACTED] recording also stated that the claimant stated that he was dribbling on himself and thus knew that he needed to use the toilet. The PAS-2005 reflected that Ms. [REDACTED] witnessed the claimant attempting to get up from the chair and the homemaker assisting him out of the chair and to the bathroom, that the client has difficulty with transferring and getting out of his bed, and that he tries to ambulate and transfer using his cane. The PAS-2005 reflected that the client's niece sets up his medications and that the client can get the pills out of the organizer himself.
- 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 incontinence of bowel and bladder, walking, transferring, and medication administration. The State Hearing Officer finds that the claimant was correctly assessed as occasional incontinence of the bladder and bowel. While it appears that the incontinence is more often than not, the claimant was aware on the day of Ms. [REDACTED]'s visit that he needed to urinate and the incontinence is not at all times. Therefore, a Level III cannot be awarded in the areas of bladder and bowel incontinence and a deficit cannot be awarded. The State Hearing Officer finds that the claimant does require physical assistance with walking and transferring. Ms. [REDACTED] witnessed the claimant requiring one-person assistance with walking and transferring but did not award a deficit as the claimant informed her that he tried to use a cane for ambulating 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 the claimant is able at times to administer his medications and a deficit cannot be awarded in that area. The State Hearing Officer finds that an additional deficit is 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 1-26-06 in the areas of eating, bathing, dressing, and grooming.
- 3) The areas of dispute involved bladder and bowel incontinence, walking, transferring, and medication administration. 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, transferring and vacating the building.
- 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 19 points (5 under item #23, 12 under item #25, 1 for vacating the building, 1 point for dementia) 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 28th Day of June, 2006.

**Thomas M. Smith
State Hearing Officer**