



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

March 1, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 28, 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] Pro-Careers
[REDACTED], Allied Nursing

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

_____,
Claimant,

Action Number: 05-BOR-4749

**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 February 28, 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 November 8, 2005 and February 28, 2006 on a timely appeal, filed January 18, 2005. It should be noted that the hearing was originally scheduled for September 2, October 5, and November 8, 2005 but was rescheduled twice at claimant's request and then was rescheduled from November 8, 2005 after the hearing was convened and the State Hearing Officer determined that the PAS-2000 was no longer timely and reflective of the claimant's condition and a new PAS assessment was ordered.

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. _____, Allied Nursing.
3. _____, Pro-Careers.
4. _____, Claimant's daughter.
5. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
6. _____, 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 (2 pages).
- D-2 Copy of PAS-2005 completed 11-29-05 (6 pages).
- D-3 Copy of order granting new PAS 11-8-05.
- D-4 Copy of potential denial letter dated 12-13-05.
- D-5 Copy of additional information provided (3 pages).
- D-6 Copy of denial letter dated 1-9-06 (3 pages).

Claimants' Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of the Title XIX Aged/Disabled Waiver Services Program when a PAS-2000 was completed for reevaluation by _____ of WVMI on 11-22-04 and was denied for medical eligibility.
- 2) The claimant was notified of potential denial on 12-17-04 and of denial on 1-13-05 and requested a hearing on 1-18-05.

- 3) The State Hearing Officer received the hearing request on 7-26-05 and a hearing was scheduled for 9-2-05 and was rescheduled for 10-5-05 and 11-8-05 at claimant's request.
- 4) Upon convening the hearing on 11-8-05, the State Hearing Officer determined that the PAS-2000 completed on 11-22-04 was no longer timely or accurately reflected the claimant's functionality and a new PAS-2000 was ordered (Exhibit D-3).
- 5) A PAS-2005 was completed on 11-29-05 by [REDACTED], R. N. of WVMI who determined that the claimant had deficits in the major life activities of bathing, dressing, grooming, and bladder incontinence but the four (4) deficits did not qualify the claimant for medical eligibility for the ADW Program as five (5) deficits are required..
- 6) The claimant was notified of potential denial on 12-13-05 (Exhibit #D-4) and additional documentation was provided by [REDACTED] of Allied Nursing and [REDACTED], M. D. on 12-15-05 (Exhibit #D-5) but Ms. [REDACTED] determined that the additional information did not change her original finding of only four (4) deficits and a denial letter was issued on 1-9-06 (Exhibit #D-6).
- 7) The hearing was reconvened on 2-28-06.
- 8) Ms. [REDACTED] testified that she determined that the claimant met criteria for a deficit in the functional activities of bathing, dressing, grooming and bladder incontinence, that the three (3) parties present (Ms. [REDACTED] Ms. [REDACTED] and the claimant.) did not disagree with her findings, that her findings are based on what she was told and observed, that the claimant ambulated with a walker although she did not witness her ambulating as the claimant was in a lot of pain, and that she was in error when she failed to include diabetes as a medical condition as it was diagnosed by the doctor.
- 9) Ms. [REDACTED] testified that she continues to fall, that someone is there all the time on weekends, that she uses the walker when possible after the homemaker leaves but her daughter checks on her all the time and she comes by every day.
- 10) Ms. [REDACTED] testified that the claimant has a history of falling, that she breaks something when she falls, that Dr. [REDACTED] stated that she needs one-person assistance with walking, that her history of falling indicates that she needs one-person assistance with walking, and that her physician knows her functional ability.
- 11) Ms. [REDACTED] testified that the claimant does have a history of falling, that she also has diabetes but the PAS-2005 does not reflect that she has diabetes, that a bedside commode is placed beside the claimant when the homemaker leaves and she does not get up and down a lot when no one is there.
- 12) Ms. [REDACTED] testified that her mother is not alone on weekends as she checks on her when she can.
- 13) Ms. Ikerd testified that an R.N. who comes to the home to do an assessment is more likely to know functionality of the claimant than a physician.
- 14) 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."

15) The only area of dispute involved walking. The evidence and testimony show that the claimant requires one-person assistance to ambulate in the home as supported by the statement from Dr. [REDACTED] (Exhibit #D-5) and the testimony of Ms. [REDACTED]. The argument of Ms. [REDACTED] that the claimant's homemaker is only present part of the time to assist with ambulation and that the claimant must ambulate by herself when the homemaker is not with her disregards the fact that the claimant requires one-person assistance when it is available. The fact that the claimant may have to ambulate without one-person assistance when no one is available to assist her does not preclude the fact that she often requires the assistance in order to prevent broken bones from falling as the evidence and testimony show that the claimant has a history of falling. In addition, the State Hearing Officer finds that a patient's physician, in particular one who has treated the patient for a number of years, is more likely to know a patient's medical condition and functionality than an R.N. who spends several hours interviewing the individual. Also, Ms. [REDACTED] testified that her findings are based on what she is told and what she observes but Ms. [REDACTED] did not observe the claimant ambulating when she completed her assessment. Therefore, the State Hearing Officer finds that the preponderance of evidence shows that the claimant does require one-person assistance in the home and the claimant qualifies for a fifth deficit.

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 11-29-05 in the areas of bathing, dressing, grooming, and bladder incontinence. The only area of dispute involved walking and the State Hearing Officer determined that the claimant does require one-person assistance with walking which qualified the claimant for a fifth deficit. The claimant meets the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as she has five (5) deficits.

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 State Hearing Officer finds that the claimant has a total of 14 points (6 from item #23 including a point for diabetes which Ms. [REDACTED] stated she mistakenly left out), 7 from item #25, and 1 point for inability to vacate the building in an emergency. The claimant qualifies for Level of Care B for three (3) hours per day or 93 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of March, 2006.

Thomas M. Smith
State Hearing Officer