



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

January 17, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 13, 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  
Kay Ikerd, Bureau for Senior Services  
\_\_\_\_\_, WVMI  
\_\_\_\_\_, Claimant's Representative

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 05-BOR-6836**

**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 January 13, 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 January 13, 2006 on a timely appeal, filed September 27, 2005. It should be noted that the hearing was originally scheduled for December 15, 2005 but was rescheduled at claimant's request.

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's son and representative.
2. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
3. \_\_\_\_\_, 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 hearing request received 9-27-05.
- D-3 Copy of PAS-2000 completed 8-15-05 (10 pages).
- D-4 Copy of potential denial letter dated 8-25-05 (2 pages).
- D-5 Copy of denial letter dated 9-12-05 (2 pages).
- D-6 Copy of evaluation request.

**VII. FINDINGS OF FACT:**

- 1) The claimant was an applicant for the Title XIX Aged/Disabled Waiver Services when an evaluation request was received and a PAS-2000 was completed by \_\_\_\_\_ of WVMI on 8-15-05 and was denied for medical eligibility.
- 2) The PAS-2000 completed by \_\_\_\_\_ on 8-15-05 determined that only four (4) deficits existed in the functional activities of being physically unable to vacate the building in an emergency, bathing, dressing and grooming.
- 3) \_\_\_\_\_ testified that she reviewed her findings from the PAS-2000 with the claimant and her son, \_\_\_\_\_, on 8-15-05 and they agreed with the findings. \_\_\_\_\_ testified that the claimant did not meet the medical eligibility criteria for the ADW Program as she did not have the required five (5) deficits in the functional activities of daily living.

- 4) Notification of potential denial of medical eligibility for the Title XIX Aged/Disabled Waiver Services Program was mailed on 8-25-05 (Exhibit #D-4) and no additional documentation was received during the 2-week waiting period.
- 5) Notification of denial of medical eligibility for the Title XIX Aged/Disabled Waiver Services Program was mailed on 9-12-05 (Exhibit #D-5) and the claimant requested a hearing on 9-27-05 (Exhibit #D-2).
- 6) Mr. \_\_\_\_\_ testified that he had two (2) points to make about his mother. He testified that he agreed with the assessment but did not realize the depth and detail. He testified that his mother wears pads daily that have to be changed 2-3 times a day and that she frequently wears depends due to diahrea, that she is more susceptible to diahrea when on antibiotics, and that she sometimes doesn't make it to the bathroom in time. Mr. \_\_\_\_\_ testified that walking is an issue with his mother, that she can walk in the house holding onto furniture but has a problem when she goes outside the home. Mr. \_\_\_\_\_ testified that his mother cannot change the water bottles on the oxygen and cannot read the small print on medicine bottles due to macular degeneration.
- 7) Ms. Ikerd testified that [REDACTED] documented that the incontinence occurred less than three (3) times a week and that walking outside the home was not considered for eligibility purposed as functional activities considered must be in the home.
- 8) There were two (2) areas of dispute offered by Mr. \_\_\_\_\_ in the areas of incontinence and walking. The State Hearing Officer is convinced by the testimony of [REDACTED] and Ms. Ikerd that the incontinence of the bladder and bowel occur less than three (3) times a week and the claimant and her son agreed with the findings at the time of the assessment on 8-15-05. Therefore, a deficit cannot be given for incontinence of the bladder or bowel. The State Hearing Officer is convinced by the testimony of Ms. [REDACTED] and Ms. Ikerd that the finding of physical assistance with walking was correct as Mr. \_\_\_\_\_ testified that the claimant can ambulate in her home by holding onto furniture but has a problem ambulating when she goes outside. The functional activities of daily living for the ADW Program are confined to activities in the home and activities outside the home are not considered. Therefore, the State Hearing Officer cannot award a deficit in the area of walking. An additional area of dispute involved administering medications as Mr. \_\_\_\_\_ testified that his mother cannot open the oxygen bottles and cannot read the print on the medicine bottles. However, the assessment by Ms. [REDACTED] showed that oxygen was used only as needed and that the claimant and her son did not report any problem with administering medications at the time of the evaluation. Thus, no deficit can be awarded in the area of administering medications. Since there are no additional deficits which can be awarded, the claimant has only four (4) deficits and does not meet the medical criteria for the ADW Program.
- 9) 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
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #26: 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)

\_\_\_\_\_ing - Level 2 or higher (physical assistance or more)

Continence - Level 3 or higher (must be incontinent)

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. #27: 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.

E #28: Individual is not capable of administering his/her own medications."

**VIII. CONCLUSIONS OF LAW:**

- 1) 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-2000 completed on 8-15-05 in the areas of being physically unable to vacate the building in an emergency, bathing, dressing and grooming. The only areas of dispute involved incontinence of the bladder and bowel, walking, and administering medications and the State Hearing Officer was convinced by the testimony of Ms. Ikerd and [REDACTED] that the information given by the claimant and Mr. \_\_\_\_\_ on 8-15-05 was accurate. The State Hearing Officer finds that no additional deficits can be awarded and the claimant has only four (4) deficits in the functional activities of daily living. The claimant does not meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as she does have five (5) deficits.

**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 17th Day of January, 2006.**

**Thomas M. Smith**  
**State Hearing Officer**