



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

April 13, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 12, 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

\_\_\_\_\_, WVMI  
\_\_\_\_\_, CCIL

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-7128**

**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 April 12, 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 April 12, 2006 on a timely appeal filed December 13, 2005. It should be noted that the hearing was originally scheduled for March 10, 2006 but was rescheduled at claimant's request.

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 caregiver.

3. [REDACTED] CCIL casemanager.
4. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
5. [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:**

- D-1 Copy of regulations (8 pages).
- D-2 Copy of hearing request received 12-13-05.
- D-3 Copy of PAS-2005 completed 11-8-05 (9 pages).
- D-4 Copy of potential denial letter dated 11-16-05 (2 pages).
- D-5 Copy of denial letter 12-6-05 (2 pages).
- D-6 Copy of evaluation request.

##### **Claimant's Exhibits:**

- #CI-1 Copy of letter from [REDACTED] (3 pages).

#### **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 11-8-05 and was denied for medical eligibility (Exhibit #3).
- 2) The PAS-2005 completed by [REDACTED] on 11-8-05 determined that only three (3) deficits existed in the functional activities of bathing, dressing, and grooming.
- 3) Ms. Ikerd testified about the regulations (Exhibit #1).
- 4) [REDACTED] testified that she completed the PAS-2005 on 11-8-05.
- 5) The claimant was notified of potential denial on 11-16-05 (Exhibit #4) and of denial on 12-6-05 (Exhibit #5) and a hearing request was received by the Bureau for Medical

Services on 12-13-05 (Exhibit #2), by the Board of Review on 1-27-06, and by the State Hearing Officer on 1-31-06.

- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of incontinence, walking, and transferring.
- 7) Testimony from the claimant revealed that she cannot make it to the bathroom without leaking but that she is able to finish when she gets there, that she has trouble transferring without physical assistance, that her neighbors and brother check on her and help her when [REDACTED] is not there. Testimony from [REDACTED] indicated that the claimant uses pads and that the doctor said she was totally incontinent of bladder (Exhibit #CI-1). Testimony from Ms. Ikerd indicated that the doctor's statement says only that the claimant suffers from chronic incontinence and does not indicate that it is total incontinence and that the claimant leaks and is able to finish. Since the claimant is aware when she needs to go to the bathroom and is able to finish when she gets there, an additional deficit cannot be awarded for incontinence.
- 8) Testimony from the claimant's witnesses indicated that the claimant requires one-person assistance at times in the home with walking. The claimant testified that neighbors and her brother help her when the caregiver is not there. Testimony from Ms. [REDACTED] indicated that she walks beside the claimant when she walks with the walker and sometimes has to physically assist her due to her ankles. Testimony from Ms. [REDACTED] indicated that she sees the claimant about six (6) times a year and someone has to walk beside her to make sure she does not fall as she has fallen before. Testimony from Ms. Ikerd indicated that the claimant needs only supervision as someone walks beside her and does not provide hands-on assistance. Testimony from [REDACTED] indicated that she saw the claimant ambulate with the walker during the assessment and that she required no hands-on assistance. Testimony from [REDACTED] indicated that the claimant walked only a short distance when [REDACTED] witnessed her ambulating. The State Hearing Officer finds that the preponderance of evidence and testimony indicates that the claimant needs one-person assistance with walking and an additional deficit is awarded for walking.
- 9) Testimony from the claimant's witnesses indicated that the claimant requires one-person assistance with transferring except when she uses a lift chair to get up from her chair. [REDACTED] testified that she has to physically assist the claimant getting out of bed in the mornings, getting off the commode, and getting up from the kitchen table. Testimony from [REDACTED] indicated that the claimant needs one-person assistance at dinner, in the bathroom, and in the bedroom. Testimony from [REDACTED] indicated that she observed the claimant transferring by herself with the lift chair. Since the claimant requires one-person assistance except for when she uses the lift chair, the claimant qualifies for an additional deficit in transferring.
- 10) Since the claimant was awarded a Level III (one-person assistance) finding for walking, she also qualifies for a deficit for vacating the building.
- 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)

Contenance - 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."

#### **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 11-8-05 in the areas of bathing, dressing, and grooming.
- 3) The areas of dispute involved incontinence, walking, and transferring. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant qualified for a deficit in the areas of transferring and walking and two (2) additional deficits are awarded for these areas. Since the claimant was awarded a Level III finding by the State Hearing Officer for walking, she also qualified for a deficit for vacating the building. The State Hearing Officer determined that the PAS-2005 completed 11-8-05 correctly assessed the claimant in the area of incontinence.
- 4) The claimant qualifies for six (6) 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 14 points and 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 13th Day of April, 2006.**

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**Thomas M. Smith  
State Hearing Officer**