



**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 14, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 14, 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] WVMH
[REDACTED], MountainHeart Comm. Services
_____, Claimant's Representative

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

_____,

Claimant,

v.

Action Number: 05-BOR-7167

**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 March 14, 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 March 14, 2006 on a timely appeal filed December 20, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. It should also be noted that the hearing was convened as a telephone conference hearing at claimant's request.

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. [REDACTED] Casemanager, MountainHeart Community Services.
3. Kay Ikerd, Bureau for Senior Services.
4. [REDACTED], West Virginia Medical Institute.

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.
- D-3 PAS-2005 completed 11-8-05 (9 pages).
- D-4 Copy of potential denial letter dated 11-11-05 (2 pages).
- D-5 Copy of additional documentation received during 2 week period (3 pages).
- D-6 Copy of denial letter 12-8-05
- D-7 Copy of evaluation request.

Claimant's Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of the Title XIX Aged/Disabled Waiver Services Program 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 #D-2).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 11-8-05 determined that only four (4) deficits existed in the functional activities of eating, bathing, dressing and grooming.
- 3) Ms. Ikerd testified regarding the regulations (Exhibit #D-1) and testified that new guidelines implemented effective November, 2005 changed the way a deficit was determined for the areas of incontinence and vacating the building, that previous regulations provided a deficit if incontinence was 3-4 times a week and now the incontinence must be total incontinence in order to receive a deficit, and that previous regulations allowed a deficit for vacating the building but new regulations require that a

Level III be assigned to walking or orientation before a deficit can be allowed for vacating the building.

- 4) Ms. [REDACTED] testified that she completed the PAS-2005 on 11-8-05 and those present were the claimant, [REDACTED] (claimant's son), and [REDACTED] (the claimant's homemaker), that all were in agreement with the findings of the assessment, that additional information was received (Exhibit #D-5) but no changes occurred as a result.
- 5) The claimant was notified of potential denial on 11-11-05 (Exhibit #D-4) and of denial on 12-8-05 (Exhibit #D-6) and a hearing request was received by the Bureau for Medical Services on 12-20-05, by the Board of Review on 1-23-06, and by the State Hearing Officer on 1-26-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of walking and medication administration.
- 7) Testimony from the claimant's witnesses revealed that the claimant requires one-person assistance when walking. Ms. [REDACTED] testified that the claimant sits and sleeps in a recliner and does not get out unless going to the bathroom, that she is legally blind and suffers from congestive heart failure and is weak. Mr. [REDACTED] testified that the homemaker has to help his mother ambulate, that she falls in the floor, that she has trouble seeing anything at all. Ms. [REDACTED] determined the claimant could ambulate with assistive device (a walker) and recorded on page 4 of the PAS-2005 that the homemaker assists the claimant with transferring and ambulation when present but that the claimant ambulates with a walker when alone. The State Hearing Officer finds that the claimant requires one-person assistance when walking and an additional deficit is awarded for walking.
- 8) Testimony from the claimant's witnesses indicated that the claimant sometimes requires assistance with medication administration. Mr. [REDACTED] testified that he and his brother sometimes put the medications in the claimant's mouth. Ms. [REDACTED] testified that insulin shots should not be considered a skill need. Ms. Ikerd testified that Medicaid regulations state that insulin shots are a skilled need. Regardless, the State Hearing Officer finds that the regulations require that medication must be placed in the client's hand, mouth, tube or eye by someone else at all times and the testimony provided in the hearing did not show that medications are administered in that manner at all times as Ms. [REDACTED] testified that the homemaker leaves the pillbox lid up for the afternoon medications when she leaves and the claimant takes the medications herself. Therefore, an additional deficit cannot be awarded for medication administration.
- 9) Since the State Hearing Officer made a finding that the claimant should be assigned a Level III for walking, an additional deficit is awarded for vacating the building.
- 10) The State Hearing Officer finds that the claimant has a total of six (6) deficits. The State Hearing Officer also finds that the claimant has a total of 19 points (6 from item #23, 12 from item #25, and 1 point for vacating the building) which provides for Level of Care C for four (4) hours per day or 124 hours per month.
- 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, Alzheimers, 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."

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 11-8-05 in the areas of eating, bathing, dressing and grooming.
- 3) The areas of dispute involved walking 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 area of walking which also qualified the claimant for an additional deficit for vacating the building. The State Hearing Officer was convinced by the evidence and testimony that an additional deficit could not be awarded for medication administration.
- 4) The claimant qualifies for six (6) deficits and continues to meet 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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of March, 2006.

Thomas M. Smith
State Hearing Officer