



**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 3, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 2, 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  
[REDACTED], WVMH  
[REDACTED], Allied Nursing  
[REDACTED], Loved Ones

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-7169**

**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 2, 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 2, 2006 on a timely appeal, filed December 19, 2005.

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. [REDACTED] Case Manager, Allied Nursing.
3. [REDACTED], Homemaker R.N., Loved Ones.
4. [REDACTED], Claimant's homemaker.
5. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
6. [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:**

Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, Chapter 500, 11-3-03.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Copy of regulations (8 pages).
- D-2 Copy of PAS-2005 completed 11-9-05 (6 pages).
- D-3 Copy of hearing request.
- D-4 Copy of potential denial letter dated 11-16-05 (2 pages).
- D-5 Copy of additional information provided but not considered (4 pages).
- D-6 Copy of denial letter dated 12-6-05 (2 pages).
- D-7 Copy of evaluation request.

##### **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-2005 was completed for reevaluation by [REDACTED] of WVMI on 11-9-05 and was denied for medical eligibility (Exhibit #2).
- 2) The claimant was notified of potential denial on 11-16-05 (Exhibit #D-4) and additional information was received after the two (2) week potential denial period and was not considered (Exhibit #D-5) and a denial letter was issued on 12-6-05 (Exhibit #D-6).
- 3) A request for a hearing was received by the Bureau for Medical Services on 12-19-05 and by the Board of Review 1-20-06 and by the State Hearing Officer on 1-24-06.

- 4) A PAS-2005 was completed on 11-9-05 by [REDACTED], R. N. of WVMI who determined that the claimant had deficits in the major life activities of bathing, dressing, and grooming but the three (3) deficits did not qualify the claimant for medical eligibility for the ADW Program as five (5) deficits are required.
- 5) Ms. [REDACTED] testified that she determined that the claimant met criteria for a deficit in the functional activities of bathing, dressing, and grooming and that the two (2) parties present ([REDACTED] and the claimant.) were in agreement with her findings.
- 6) Ms. [REDACTED] testified that she does need help cutting up food, that her hands are getting worse, that she does need her helper, that it is embarrassing to tell people she cannot do for herself, that her daughter helps with her medication, and that she might have signed the consent form but did not read it all.
- 7) Ms. [REDACTED] testified that she has known the claimant a number of years, that she has told her that her food has to be cut up for her due to carpal tunnel and pain, that she was a Level III on her previous PAS-2000 for incontinence, that she is constantly wet and dribbling and wears protection, that the physician says it is more difficult for her to do things.
- 8) Ms. [REDACTED] testified that the claimant was alert and oriented on the day of Ms. [REDACTED] visit, that she did agree with the findings at that time, that the claimant did tell Ms. [REDACTED] that she made it to the bathroom in time a couple of times a day, that she does not recall Ms. [REDACTED] asking about cutting up food but the claimant wears braces on both hands which they may have overlooked and which make it difficult to cut food and open containers, that she agreed at the time of the assessment that the claimant was not totally incontinent, and that she was not aware that the homemaker sets up medications and thought that the daughter put them in the daily planner.
- 9) Ms. [REDACTED] testified that the claimant does need help cutting food, that she is losing her ability with continence, that she totally cuts up her food, that she does not get enough oxygen, that she has an electric wheelchair but does not use it because of her hands, that she puts the medication in the claimant's hand, that the daughter sets it up and she pops the container lid and puts the medicine in the claimant's hand, and that the claimant will say that she is not incontinent and can eat by herself because she is embarrassed.
- 10) Ms. [REDACTED] testified that the person must be totally disoriented to receive vacating as a deficit, that the claimant was alert and oriented on the day of her visit, that she is familiar with the wrist supports and have seen people eat with those, that the claimant told her that she took the medications herself, and that she went over everything with the claimant and Ms. [REDACTED] and they agreed with her findings.
- 11) Ms. Ikerd testified that the homemaker is not allowed by policy to place pills into the claimant's hand, that the physician only says that things are becoming more difficult, that the physician only sees a patient briefly and may not know functional abilities, and that the PAS-2005 was completely accurately by Ms. [REDACTED]
- 12) 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."

- 13) The areas of dispute for which any additional deficits could be added involved eating, incontinence, and medication administration. The preponderance of evidence and testimony show that the claimant requires Level II assistance with eating even though she informed Ms. [REDACTED] that she did not require any assistance. The State Hearing Officer accepts the testimony of Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] that the claimant does require her food to be cut up and a deficit is added for eating. The preponderance of evidence and testimony show that the claimant has more than just occasional incontinence but is not totally incontinent. The claimant reported to Ms. [REDACTED] that she was not totally incontinent and Ms. [REDACTED] testified during the hearing that the claimant did tell Ms. [REDACTED] during the assessment on 11-9-05 that she could make it to the bathroom a couple times a day. Therefore, since total incontinence is required before a deficit can be added, the State Hearing Officer cannot add a deficit for incontinence. The State Hearing Officer finds that there was no testimony provided to show that the claimant's daughter places the medication in the claimant's hand or assists in any other way other than to set up the medication. Ms. [REDACTED] testified that she placed medication in the claimant's hand but Ms. Ikerd testified that homemakers are not allowed to perform that function. Ms. [REDACTED] testified that the claimant's daughter sets up the medication but there was no testimony provided that the daughter assists in any other way with the medication administration. Therefore, an additional deficit cannot be added for administration of medication. The State Hearing Officer finds that the claimant has four (4) deficits and five (5) deficits are required to meet the medical criteria.

## **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 three (3) deficits on the PAS-2005 completed on 11-9-05 in the areas of bathing, dressing, and grooming. The areas of dispute involved eating, incontinence, and medication administration and the State Hearing Officer determined that the claimant does require Level II assistance with eating which qualified the claimant for a fourth deficit. However, the State Hearing Officer determined that no additional deficits could be

a \_\_\_\_\_ed. The claimant does not meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as she has only four (4) deficits and five (5) deficits are required.

**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 3rd Day of March, 2006.**

---

**Thomas M. Smith  
State Hearing Officer**