



**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 10, 2006

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 7, 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
Nisar Kalwar, Department's Attorney
Hoyt Glazer, Claimant's Attorney
_____, _____ Comm. Services
_____, SCAC

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

_____,
Claimant,

v.

Action Number: 05-BOR-7255

**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 7, 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 7, 2006 on a timely appeal filed January 5, 2006. It should also be noted that the hearing was originally scheduled for March 10, 2006 but was rescheduled at the request of claimant's attorney.

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] Casemanager, Southwestern Comm. Action Council.
4. [REDACTED] R. N, Homemaker, [REDACTED] Comm. Services.
5. Hoyt Glazer, Claimant's Attorney, Legal Aid of WV.
6. Nisar Kalwar, Department's Attorney (participating by speaker phone).
7. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
8. [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:

- #1 Copy of hearing request received 1-5-06.
- #2 Copy of Hearing/Grievance Record Information.
- #3 Copy of regulations (8 pages).
- #4 Copy of PAS-2005 completed 11-17-05 (6 pages).
- #5 Copy of informed consent.
- #6 Copy of evaluation request.
- #7 Copy of potential denial letter dated 12-8-05 (2 pages).
- #8 Copy of denial letter 12-27-05 (2 pages).

Claimant's Exhibits:

- #C1-1 Copy of pictures (3 pictures).
- #C1-2 Copy of pictures (2 pictures).

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 11-17-05 and was denied for medical eligibility (Exhibit #4).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 11-17-05 determined that only three (3) deficits existed in the functional activities of eating, bathing, and dressing.

- 3) Ms. [REDACTED] testified that she completed the PAS-2005 on 11-17-05 and those present were the claimant and [REDACTED] (the casemanager), and that neither disagreed with her findings.
- 4) The claimant was notified of potential denial on 12-8-05 (Exhibit #7) and of denial on 12-27-05 (Exhibit #8) and a hearing request was received by the Bureau for Medical Services on 1-5-06 (Exhibit #1), by the Board of Review on 1-23-06, and by the State Hearing Officer on 1-26-06.
- 5) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of incontinence, walking, and vacating the building.
- 6) Testimony from the claimant revealed that she cannot make it to the bathroom without going on herself, that it takes her five (5) minutes to get from the living room to the bathroom when no one is there, that she wears pads all the time, and that the caregiver sometimes has to help her get to the bathroom. Testimony from the caregiver (Ms. [REDACTED]) indicated that the claimant needs help getting to the bathroom and that it takes about five (5) minutes. Testimony from Ms. [REDACTED] indicated that the incontinence must be 100%, that there must be no bladder control, but that she has not seen anything in writing to indicate that it must be 100%. Since the claimant is aware when she needs to go to the bathroom and has incontinence because she does not make it in time, an additional deficit cannot be awarded for incontinence.
- 7) 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 she cannot walk without her quad cane and that the caregiver sometimes has to help her get to the bathroom and helps her at times every day, and that she has had several falls. Testimony from Ms. [REDACTED] indicated that she helps the claimant with walking every day, that she holds onto the claimant while she walks with the cane, and that she sometimes has to help her get to the bathroom from the living room. The documentation from Ms. [REDACTED] indicated that she observed the claimant walking with a cane but there is no evidence that Ms. [REDACTED] asked the claimant if she needed one-person assistance or if so, how often. An additional deficit is awarded for walking.
- 8) Mr. Glazer argued that vacating the building in an emergency should be considered but offered no testimony regarding that issue. However, since the claimant qualifies for a deficit for walking due to a Level III finding by the State Hearing Officer, she now qualifies for a deficit for vacating the building.
- 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. 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)

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 three (3) deficits on the PAS-2005 completed on 11-17-05 in the areas of eating, bathing, and dressing.
- 3) The areas of dispute involved incontinence, walking, and vacating the building. 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 walking and vacating the building (by virtue of a finding of Level III in the area of walking by the State Hearing Officer). The State Hearing Officer determined that the PAS-2005 completed 11-17-05 correctly assessed the claimant in the area of incontinence.
- 4) The claimant qualifies for five (5) 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 10th Day of April, 2006.

**Thomas M. Smith
State Hearing Officer**