



**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

July 25, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 20, 2007. 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 503 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
_____, WV Choice
_____, Prestera Center

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

_____,

Claimant,

v.

Action Number: 07-BOR-1270

**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 July 20, 2007 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 July 20, 2007 on a timely appeal, filed May 3, 2007. It should be noted that the hearing was originally scheduled for July 5 and July 17, 2007 but was rescheduled initially at claimant's request and then by State Hearing Officer.

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. [REDACTED], Claimant.
2. [REDACTED] CCIL Casemanager.
3. [REDACTED] Prestera Center Casemanger.
4. [REDACTED] Homemaker R. N., WV Choice.
5. [REDACTED], Claimant's homemaker.
6. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
7. [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, 11-3-03.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of regulations (4 pages).
- D-2 Copy of PAS-2000 completed 1-9-07 (11 pages).
- D-3 Copy of potential denial letter dated 3-2-07 and associated documents (20 pages).
- D-4 Copy of denial letter dated 4-19-07 (2 pages).

Claimants' Exhibits:

None. (It should be noted that document listed as CI-1 Not Admitted was objected to by Ms. Ikerd and not admitted as evidence as it was dated after the potential denial letter and was received by the Department and the State Hearing Officer outside the ten (10) day deadline prior to the hearing. In addition, other documents provided by the Department but not entered into evidence were marked as Not Entered).

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of the Title XIX Aged/Disabled Waiver Services Program when a PAS-2000 was completed for reevaluation by [REDACTED] of WVMI on 1-9-07 and was denied for medical eligibility (Exhibit #D-2).
- 2) The claimant was notified of potential denial on 3-2-07 (Exhibit #D-3) and additional documents were received and considered by the WVMI R. N. with final denial notification issued on 4-19-07 (Exhibit #D-4).

- 3) The claimant's hearing request was received by the Bureau for Medical Services on 5-3-07, by the Board of Review on 5-24-07, and by the State Hearing Officer on 5-29-07.
- 4) The WVMi R. N. testified about the PAS-2000 completed on 1-9-07 (Exhibit #D-2) which 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. Ikerd testified about the regulations (Exhibit #D-1).
- 6) The CCIL Casemanager testified that the claimant should be awarded deficits in the areas of meal preparation, medication administration, vacating the building, and bladder incontinence. The CCIL Casemanager testified that the claimant cannot get proper nourishment as he cannot prepare his food, that he cannot fill his syringes for his shots or fill his pill boxes, that he is mentally unable to vacate the building, and that he wets his pants daily and informed the WVMi nurse of that.
- 7) The claimant testified that Dr. [REDACTED] said he was incontinent and that he wears diapers.
- 8) Ms. [REDACTED] testified that the claimant is delusional and cannot set up his medications, that he is schizophrenic and paranoid, that he tries not to use his cane when he feels better, that he wears diapers daily and is incontinent, and that he sets off the alarm when he tries to use the stove.
- 9) Ms. [REDACTED] testified that the claimant was receiving skilled nursing for his feet and hands, that because Dr. [REDACTED] office said they could not find a diagnosis of incontinence does not mean it does not exist, that he was incontinent in October, 2006, that a normal person would get rattled when trying to vacate the building in an emergency.
- 10) The WVMi R. N. testified that she did not notice any smell of urine and that the claimant told her he was wearing the same undergarment as the day before, that she witnessed the claimant ambulating without his cane, that the claimant told her he could crawl out of the building if necessary.
- 11) The BOSS R.N. testified that meal preparation is not a deficit, that filling a syringe is a skilled need and filling a pillbox is prompting or supervision, that there was not evidence that the claimant could not vacate the building.

12) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

13) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

14) Aged Disabled Home and Community-Based Services Manual Section 503.1.1
PURPOSE:

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

15) Aged Disabled Home and Community-Based Services Manual Section 503.2
MEDICAL CRITERIA:

An individual must have five deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24 Decubitus; Stage 3 or 4

#25 In the event of an emergency, the individual is c) mentally unable to vacate or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.

#26 Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- | | |
|----------------------------|---|
| a. Eating----- | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b. Bathing ----- | Level 2 or higher (physical assistance or more) |
| c. Grooming--- | Level 2 or higher (physical assistance or more) |
| d. Dressing ---- | Level 2 or higher (physical assistance or more) |
| e. Continence--
bowel | Level 3 or higher; must be incontinent |
| f. Continence--
bladder | Level 3 or higher; must be incontinent |
| g. Orientation-- | Level 3 or higher (totally disoriented, comatose) |
| h. Transfer----- | Level 3 or higher (one person or two person assist in the home) |
| i. Walking----- | Level 3 or higher (one person assist in the home) |
| j. 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) |

#27 Individual has skilled needs in one or more of these areas B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations.

#28 The individual is not capable of administering his/her own medications.

- 16) Aged Disabled Home and Community-Based Services Manual Section 503.4
MEDICAL REEVALUATION:

Annual reevaluations for medical necessity for each ADW member must be conducted.

- 17) The areas of dispute involved eating, bladder incontinence, vacating the building and administration of medication. The preponderance of evidence and testimony show that the claimant does not meet the criteria for a deficit in the areas of eating and medication administration. The claimant needs only meal preparation which is not considered a deficit. Therefore, a deficit cannot be awarded for eating. In the area of medication administration, the claimant needs assistance with setting up medication and this is not considered a deficit. Therefore, a deficit cannot be awarded for medication administration. In the areas of bladder incontinence and vacating the building, the State Hearing Officer finds that the claimant does meet the criteria for a deficit. While there was some dispute about whether the claimant has bladder incontinence, the State Hearing Officer finds that the preponderance of evidence and testimony support the finding that the claimant is incontinent of bladder and should be awarded a deficit in that area. In regard to vacating the building in an emergency, the State Hearing Officer finds that the claimant is mentally incapable of vacating the building in an emergency. Thus, a deficit is awarded in the areas of bladder incontinence and vacating the building in an emergency and the claimant has five (5) deficits.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations in Section 503.2 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-2000 completed on 1-9-07 in the areas of bathing, dressing, and grooming.
- 2) The areas of dispute involved eating, incontinence of the bladder, vacating the building, and medication administration and the State Hearing Officer determined that the claimant does require physical assistance with incontinence of the bladder and vacating the building. The State Hearing Officer determined that the claimant did not meet the criteria for a deficit in the areas of eating or in the area of medication administration.
- 3) The claimant meets the medical criteria 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 Department will determine Level of Care based on the PAS-2000 and the findings of this hearing decision.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of July, 2007.

Thomas M. Smith
State Hearing Officer