



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

September 7, 2007



Dear 

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 6, 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 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
, WVMI
Claimant's Representative

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

█
Claimant,

v.

Action Number: 07-BOR-1662

**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 September 6, 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 September 6, 2007 on a timely appeal, filed July 2, 2007 at the Bureau of Senior Services.

It should be noted here that the claimant's benefits have been denied 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's representative.

2. Kay Ikerd, R.N., Bureau of Senior Services.
3. [REDACTED], R. N., 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 5-9-07 (8 pages).
- D-3 Copy of potential denial letter dated 5-21-07 (2 pages).
- D-4 Copy of denial letter dated 6-13-07 (2 pages).

Claimants' Exhibits:

None.

(It should be noted that other documents provided in the Department's evidence package were not entered as evidence and are marked as "not admitted".

VII. FINDINGS OF FACT:

- 1) The claimant was an applicant of Title XIX Aged/Disabled Waiver Services when a PAS-2000 was completed by the R. N. from WVMI on 5-9-07 and was denied for medical eligibility (Exhibit #D-2).
- 2) The PAS-2000 completed by the R. N. from WVMI on 5-9-07 determined that only two (2) deficits existed in the functional activities of being mentally unable to vacate the building in an emergency and incontinence of the bowel.
- 3) The R. N. from WVMI testified that the claimant had no decubitus (item #24), that she was mentally incapable of vacating the building and this counted as a deficit, that she could feed herself (item #26a), that she could bathe, dress and groom herself with prompting (items #26 b, c, & d), that she had occasional bladder incontinence (item #26e), that she was incontinent of the bowel and this counted as a deficit (item #26f), that she had intermittent disorientation (item #26g), that she can transfer and walk using

assistive device (items #26h and #26i), that she did not use a wheelchair in the home (item #26j), that she had no professional/technical needs (item #27), that she was capable of administering her medications with prompting/supervision (item #28), and that she had a total of two (2) deficits.

- 4) The claimant was notified of potential denial on May 21, 2007 (Exhibit #D-3) and of denial on June 13, 2007 (Exhibit #D-4) and requested a hearing on July 2, 2007.
- 5) The claimant's representative testified that he does not question the findings of the WVMIR. N. but his sister has a higher level of deficits than one (1) visit would show, that she needs periodic visits by a health care specialist to tell her to take her medications and take a bath, that she falls weekly and bruises herself significantly, that her mobility is limited, that she does have bowel incontinence, that she can name her medications but they have tried pill boxes but they do not work, that they just need someone to tell her to take her medications and to prompt her for hygiene and physical exercise, and that the claimant's condition has worsened since the PAS-2000 was completed on 5-9-07.
- 6) Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policies and Procedures Manual, 11-3-03 states, in part,

"Section 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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 Social Security Administration (SSA) if an active SSI (Supplemental Security Income) 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.

503.1 MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

503.1.1 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.

503.2 MEDICAL CRITERIA

An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), Attachment 14, 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 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.

- a. Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing - Level 2 or higher (physical assistance or more)
- c. Dressing - Level 2 or higher (physical assistance or more)
- d. Grooming - 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 assistance in the home)
- i. Walking - Level 3 or higher (one person assistance 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 - (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

#28: Individual is not capable of administering his/her own medications."

- 7) There were no real areas of dispute on the claimant's behalf with the findings of the PAS-2000 on 5-9-07. The claimant's representative testified that he did not dispute the findings of the PAS-2000 on 5-9-07 but that the claimant's condition had worsened. The hearing decision is based on the findings of the PAS-2000 on 5-9-07 and not on the condition of the claimant after that date. The claimant's representative was advised that he could request another PAS-2000 to evaluate the claimant's current medical condition. However, the State Hearing Officer finds that the PAS-2000 completed on 5-9-07 was correct in determining that the claimant had only two (2) deficits.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations in Section 503 require that five (5) deficits exist in the major life areas and the claimant was determined to have only two (2) deficits on the PAS-2000 completed on 5-9-07 in the areas of being mentally unable to vacate the building in an emergency

and bowel incontinence. There were no areas of dispute on behalf of the claimant with the findings of the PAS-2000 on 5-9-07. The claimant does not meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as she does not have five (5) deficits.

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 7th Day of September, 2007.

**Thomas M. Smith
State Hearing Officer**