



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 19, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 17, 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 Hearing 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 for the ADW program is based on current policy and regulations. Some of these regulations state as follows: The Aged Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged Disabled (HCB) Services Manual 503- (11/1/03).

The information which was submitted at your hearing revealed that you meet the medical eligibility criteria for services under 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, BOSS
[REDACTED], WVMH
[REDACTED], CWVAS

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

_____,

Claimant,

v.

Action Number: 07-BOR-656

**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 17, 2007 for _____ on a timely appeal filed January 22, 2007. 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.

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 in the [REDACTED] County DHHR office with Department representatives participating by speaker phone upon agreement of the claimant and that State Hearing Officer Thomas M. Smith conducted the hearing in place of State Hearing Officer Cheryl McKinney.

II. PROGRAM PURPOSE:

The Program entitled Aged Disabled Waiver 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 an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July 1982 to those financially eligible individuals

who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

██████████ CaseManager, Central WV Aging Services (CWVAS).
██████████, Claimant's Homemaker.

_____, Claimant's Sister.

Kay Ikerd, R. N., Bureau of Senior Services (BOSS), (participating by speaker phone).

██████████ R. N., WV Medical Institute (WVMI), 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 Department was correct in the decision to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §500**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Copy of Aged/Disabled Home and Community based Services Manual §503 - 503.4 (4 pages).

D-2 Copy of Pre-Admission Screening, PAS, completed 11-28-06 (7 pages).

D-3 Copy of notice of potential denial dated 12-28-06 (2 pages).

D-4 Copy of notice of denial dated 1-15-07 (2 pages).

(It should be noted that additional documents submitted by the Department were not admitted as evidence and these documents are marked "not admitted" for identification purposes only).

Claimant's Exhibits:

CI-1 Copy of written statement by claimant (2 pages).

CI-2 Copy of Progress Note of Casemanager of CWVAS dated 4-6-07. (It should be noted that Exhibit #CI-2 was objected to by the Department as hearsay and the objection was taken under advisement. The objection is upheld as the Progress Note contains information about a phone conversation between the Casemanager and a doctor which is third party information and is considered as hearsay evidence. The document is not admitted as evidence and is marked as Exhibit #CI-2 for identification purposes only).

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of the Title XIX Aged Disabled Waiver Services Program when a reevaluation for medical eligibility was due.
- 2) The PAS-2000 completed by the WVMi R.N. on 11-28-06 (Exhibit #D-2) determined that only four (4) deficits existed in the areas of eating, bathing, dressing, and grooming.
- 3) Notification of potential denial was issued on 12-28-06 (Exhibit #D-3) showing four (4) deficits when five (5) deficits are required.
- 4) Notice of final denial was issued on 1-15-07 (Exhibit #D-4) showing four (4) deficits.
- 5) The claimant's hearing request was received by the Bureau for Medical Services on 1-22-07 and by the State Hearing Officer on 2-20-07.
- 6) The R.N. from BOSS testified about the regulations and testified that medical history is not part of what the WVMi R. N. considers, that the Fire Department would help people vacate the building in an emergency, that the R.N. From WVMi observed the claimant transferring,
- 7) Testimony from the WVMi R. N. indicated that she determined the claimant had only four (4) deficits in the activities of daily living in the areas of eating, bathing, dressing, and grooming and did not meet the medical criteria for the Title XIX Aged Disabled Waiver Program, and that high rises have fire drills and an emergency exit plan.
- 8) Testimony from the Casemanager from CWVAS included a reading of the claimant's statement into the record. The Casemanager testified that the claimant is very frail, weighs only 74 lbs., that there are three (3) separate sets of doors that she would have to negotiate to vacate in an emergency, and that it would be difficult for her to vacate in an emergency without physical assistance.
- 9) Testimony from the claimant's sister indicated that the claimant has a history of fainting, that she faints if she gets frightened, and that the claimant has a heart problem.
- 10) Testimony from the claimant's homemaker indicated that the claimant has a condition of the feet, that her toes stay in a curled in position, that she is too weak to open the doors to escape the building, that they do not have fire drills where the claimant lives, that staff are there from 8 a.m. to 4 p.m. but not 24 hours a day, and that the claimant could not get out of every exit in case of a fire.
- 11) 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.

12) 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.

13) 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.

14) 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-- Level 3 or higher; must be incontinent
bowel

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 medication.

- 15) The only area of dispute involved vacating the building in an emergency. The State Hearing Officer finds that, while the claimant reported to the WVMR N. that she needed only supervision to vacate the building in an emergency, due to the diagnosis of ASCVD and CAD, shortness of breath, arthritis in hands, legs and feet, weight of only 74 lbs., and the cumulative affect of all of these conditions, that the claimant could not physically vacate the building in an emergency without physical assistance. The claimant will be awarded a deficit in the area of vacating the building in an emergency.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. The WVMR N. determined that the claimant had only four (4) deficits in the areas of eating, bathing, dressing, and grooming.
- 2) The only area of dispute raised at the hearing by the claimant's representatives involved vacating the building in an emergency. The State Hearing Officer found that the claimant met the criteria for a deficit in vacating the building in an emergency due to being physically unable to vacate the building in an emergency without physical assistance.
- 3) The claimant has a total of five (5) deficits.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse the action of the Department to deny medical eligibility for the Title XIX Aged Disabled Waiver Services Program. The Department

will include a deficit for vacating the building in an emergency and will assign the associated points when assessing the case for level of care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of April, 2007.

Thomas M. Smith
State Hearing Officer