



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 24, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 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 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 did not 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 **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, BOSS
[REDACTED] WVMI
[REDACTED] Kelly Home Services

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

_____,

Claimant,

v. Action Number: 07-BOR-827

**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 20, 2007 for _____ on a timely appeal filed February 27, 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 denied pending a hearing decision. It should be noted that the hearing was convened in the Logan County DHHR office with the Department representatives participating by speaker phone upon agreement of the claimant.

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:

_____, Claimant.

_____, Claimant's sister.

_____, Casemanager, Kelly Home Services.

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.

(It should be noted that Ms. Winter was identified on the hearing request as the claimant's representative but was identified during the hearing as the claimant's witness.)

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 12-20-06 (9 pages).
- D-3 Copy of notice of potential denial dated 1-10-07 (2 pages).
- D-4 Copy of notice of denial dated 2-5-07 (2 pages).
- D-5 Copy of letter from claimant sent 1-16-07 during 2 week potential denial period. (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).

VII. FINDINGS OF FACT:

- 1) The claimant was evaluated for initial medical eligibility for the Title XIX Aged Disabled Waiver Services Program on 12-20-06 by the R.N. from WVMI via a PAS-2000.

- 2) The PAS-2000 completed by the WVMI R.N. on 12-20-06 (Exhibit #D-2) determined that only two (2) deficits existed in the areas of bathing and grooming.
- 3) Notification of potential denial was issued on 1-10-07 (Exhibit #D-3) showing two (2) deficits when five (5) deficits are required.
- 4) Letter was received from the claimant during the potential denial period dated 1-16-07 (Exhibit #D-5) which was reviewed but did not change the findings of the R. N. from WVMI.
- 5) Notice of final denial was issued on 2-5-07 (Exhibit #D-4) showing two (2) deficits.
- 6) Testimony from the WVMI R. N. indicated that she determined the claimant had only two (2) deficits in the activities of daily living and did not meet the medical criteria.
- 7) Testimony from the claimant indicated that she could not vacate the building in an emergency, that she could not get down the stairs, that she cannot do zippers or fasten bra, that she cannot cook or work at all, that she said she used the sweeper to see if she could, that she can dust, that she wears a pad for her bladder during the day and gets up 3-4 times a night, that she can't walk but three (3) steps before getting ready to fall, that when the WVMI R.N. saw her in the hallway, she was holding onto the rail, that she got up and got her medicine but her hands could have held onto the walls if she needed, that the WVMI R. N. did not go over the findings with her, that she did not remember telling her that she could do her bra, buttons, and zippers, that she does not recall saying she had only slight dribbling after voiding, that she does know when she has to void, that she does take her medicine from the bottle, that she changes her pads 3-4 times a day and her sister told the R.N. from WVMI about the pads.
- 8) Testimony from claimant's sister indicated that the claimant's fingerprints are on the wall where she holds onto them for support, that she was there during the assessment and does not recall the WVMI R. N. going over the assessment with them, and that she told the WVMI R. N about the claimant using pads.
- 9) Testimony from the Casemanager indicated that the claimant lives on the 7th floor and that there are two (2) flights of stairs with each floor, and that the claimant told her in January, 2007 that she needed help with vacating the building, dressing, grooming, and incontinence of more than three (3) times a week.
- 10) Testimony from the WVMI R. N. indicated that she observed the claimant transfer from the couch and walk into the kitchen without the walker, that she observed the claimant walking without the walker more than once, that she asked the claimant about getting down the stairs in an emergency and she told her she could hold onto the rails, that she did discuss her findings with the claimant and her sister and there were no disagreements, and that there was no mention of pads.
- 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. Continen--
bowel | Level 3 or higher; must be incontinent |
| f. Continen--
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.

15) The area of dispute involved walking, vacating the building, bladder incontinence, and dressing. The State Hearing Officer finds that the evidence and testimony show that the claimant is able to walk with supervision or assistive device. Neither the claimant nor her sister testified during the hearing that she needed one-person assistance with walking. Therefore, the WVMR. N. properly determined that the claimant required supervised or assistive device to walk and did not meet a deficit in that area. In regard to vacating the building, the WVMR. N. determined that the claimant could vacate the building in an emergency independently. The claimant testified that she could not vacate the building in an emergency. The State Hearing Officer finds that the claimant could vacate the building in an emergency but would require supervision and this would not result in a deficit. In regard to bladder incontinence, the WVMR. N. determined that the claimant was continent of bladder and the claimant testified that she wears pads but knows when she needs to void. The State Hearing Officer finds that the claimant has occasional incontinence but does not meet the criteria for Level III for incontinence. The evidence and testimony show that the claimant testified that she needed assistance with dressing but the documentation by the WVMR. N. indicated that the claimant did not require assistance with dressing. The State Hearing Officer finds that the claimant reported to the WVMR. N. that she did not require assistance with dressing and an additional deficit cannot be awarded in the area of dressing.. Therefore, the State Hearing Officer finds that there are no additional deficits to be given to the claimant.

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 two (2) deficits in the areas of bathing and grooming.

- 2) The issues raised at the hearing by the claimant disputing the findings of the PAS-2000 by the WVMIR. N. in the areas of vacating the building in an emergency, walking, dressing and bladder incontinence. The State Hearing Officer found that the claimant did not meet a deficit in any of the areas of dispute.

IX. DECISION:

It is the decision of the State Hearing Officer that the Department was correct in the determination that this claimant is not medically eligible for the Title XIX Aged Disabled Waiver Services Program. I am ruling to **uphold** the Agency's action to deny medical eligibility for the Title XIX Aged Disabled Waiver Services Program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of April, 2007.

Thomas M. Smith
State Hearing Officer