



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2269 Park Avenue, Suite 100
Huntington, West Virginia 25704
March 17, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 15, 2005. Your hearing request was based on the Department of Health and Human Resources' (WVMI) 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 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 require the type of services provided in a skilled nursing care facility and are not medically eligible for the Aged/Disabled Waiver Services Program.

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.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Kay Ikerd, BOSS
Kim Sang, WVMI
_____, Central WV Aging

NAME: _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 15, 2005 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 originally convened on March 15, 2005 on a timely appeal filed January 18, 2005.

It should be noted here that any benefits under the Aged/Disabled Home and Community Based Services Waiver Program have been continued pending the results of this hearing. It should also be noted that Kay Ikerd from the Bureau for Senior Services (BOSS) and Kim Sang from West Virginia Medical Institute (WVMI) testified by speaker phone.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Title XIX Aged/Disabled Waiver Services Program is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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. _____, Claimant's brother.
4. _____, Claimant's sister-in-law.
5. _____ Casemanager, Central WV Aging.
6. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
7. Kim Sang, 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. QUESTION 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

Exhibit #1 Copy of regulations (2 pages).

Page 2

- " #2 Copy of potential denial letter 12-2-04 (2 pages).
- " #3 Copy of PAS-2000 denied 10-22-04 (5 pages).
- " #4 Copy of hearing request received 1-18-05.
- " #5 Copy of Medicaid Waiver Patient Contact form.
- " #6 Copy of statement from _____ 12-6-04.
- " #7 Copy of statement from _____, caregiver.
- " #8 Copy of statement from _____, D. O. 12-13-04
- " #9 Copy of R.N. Assessment form 11-1-04 (2 pages).

- " #10 Copy of Medical Necessity Evaluation request.
- " #11 Copy of denial notification letter 1-13-05 (2 pages).

VII. FINDINGS OF FACT

1. The claimant was an applicant of services under the Title XIX Aged/Disabled Waiver (ADW) Services Program when a PAS-2000 was completed by Kim Sang, R. N. from West Virginia Medical Institute (WVMI) (Exhibit #3).
2. WVMI is the agency contracted through the WV Department of Health & Human Resources (WVDHHR) to evaluate and reevaluate medical eligibility for the ADW Program.
3. A PAS-2000 was completed by Kim Sang, R. N. from WVMI, on 10-22-04 and was denied for medical eligibility for the Title XIX ADW Program.
4. Findings of PAS-2000 by Kim Sang on 10-22-04 (Exhibit #3) reflected that the claimant had one (1) deficit in the activities of daily living in the area of bladder incontinence and that the claimant did not meet the criteria for medical eligibility for the Title XIX ADW Program as he did not have the required five (5) deficits.
5. Ms. _____ testified that she was not walking but did let Ms. Sang in and walked back to her chair, that Ms. Sang was 1 and ½ to 2 hours late and her caregiver had to leave and was not present, that she was laying down when she came, that she was half asleep and did not know what she was doing, that the caregiver gets her clothes out for her in the evening but she does not need help dressing, that she cannot get in the shower by herself and did not tell Ms. Sang that she did not need help with bathing or that she could do it by herself, that the caregiver does her hair, and that she is able to self-medicate.
6. Ms. Sang testified that she was running late due to having the wrong address, that she offered to delay or reschedule the appointment, that Ms. _____ did come out into the hallway, that Ms. _____ did tell her that she could bathe, dress, and groom herself, that she did witness her getting up and down from the chair as she got up to get her medications, that she reviewed the assessment with Ms. _____ and Ms. _____ agreed with it, and that Ms. _____ told her she needed someone to do work for her in the home.
7. Ms. _____ testified that she stepped outside the door, that she had been laying on the couch, that she can shower herself but needs someone there, that the caregiver does wash her hair and her back, that she did get up once to get her medications, and that Ms. Sang did not offer to reschedule the appointment.
8. Ms. _____ testified that she does help Ms. _____ with bathing.
9. Ms. _____ testified that Ms. _____ gets confused at times.
10. Mr. _____ testified that Ms. _____ needs help with daily chores.
11. The only areas of dispute with the PAS-2000 completed by Ms. Sang on 10-22-04 involve the areas of bathing and grooming, and dressing (item #26 b, c).
12. The State Hearing Officer is convinced by the evidence and testimony that the claimant does need physical assistance with bathing and grooming. Therefore, the State Hearing Officer is awarding a deficit in the areas of bathing (item #26, b) and grooming (item #26 c) but the claimant still has only three (3) deficits which does not meet the criteria for medical eligibility for the ADW Program as five (5) deficits are required.

Page 3

CONCLUSIONS OF LAW

1. 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. #24: Decubitus - Stage 3 or 4

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

C. #26: 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 incontinent)

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. #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.

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

Page 4

2. Five deficits are required in order to meet the medical eligibility criteria for the Title XIX Aged/Disabled Waiver Services Program and the claimant has only one (1) deficit.

VIII. DECISION

Based upon the evidence and testimony presented, I must uphold the action of WVMI to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program. In order to be eligible for the Aged/Disabled Waiver Services Program, an individual must have five (5) deficits identified on the PAS-2000 as specified in the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual under Section 570.1.b listed in the Conclusions of Law in Section VII. The PAS-2000 denied 10-22-04 (Exhibit #3) shows that the claimant has one (1) deficit in the categories of daily living in bladder incontinence. Testimony obtained during the hearing convinces the State Hearing Officer that the claimant needs physical assistance with bathing and with grooming but not in any other daily

living activities. In regard to the claimant's complaint that her caregiver was not present for the completion of the PAS-2000, the caregiver was present during the hearing and available to dispute the findings of the PAS-2000 and only testified in regard to giving physical assistance with bathing. Therefore, since five (5) deficits must exist in order to be medically eligible and the claimant has only three (3) deficits, the State Hearing Officer must uphold the action of WVMH to determine that the claimant is not medically eligible for the Title XIX Aged/Disabled Waiver Services Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.