



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Building 6 Room 817B
Charleston, WV 25305

Joe Manchin
Governor

Martha Walker
Secretary

December 21, 2005

Dear Mrs. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law for your hearing held June 9, 2005. Your Hearing request was based on the Department of Health and Human Resources' proposal/action to deny medical eligibility under the Aged and Disabled Waiver 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 specifies that your eligibility to participate in the program is determined by the number of points scored under certain Levels of Care Criteria.

The information which was submitted at the hearing revealed that you do not meet medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to deny your request for participation in the Aged and Disabled Waiver Program.

Sincerely,

A handwritten signature in black ink, appearing to be "A. J. [REDACTED]".

State Hearing Officer
Member, State Board of Review

cc: Board of Review
BoSS

COPY

ADDRESS: [REDACTED] WV 26101

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 June 9, 2005 for [REDACTED]

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 June 9, 2005 on a timely appeal filed January 19, 2005.

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.

III. PARTICIPANTS

[REDACTED], Claimant
Kay Ikerd, BoSS
Julia Foster, WVMI

[REDACTED]
Alva Page, III, Esq.
Chuck Rogers, Esq.

Presiding at the hearing was Shawn A. Taylor, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether Mrs. [REDACTED] met the medical eligibility requirements for the Aged and Disabled Waiver Program as of November 19, 2004.

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

1. Copy of applicable regulations, including §570.1.b MEDICAL CRITERIA;
2. Copy of "Request for Hearing" dated January 13, 2005;
3. Copy of PAS-2000 completed by Julia Foster on November 19, 2004 (5 pages);
4. Copy of "Notice of Decision" issued by WVMi on January 11, 2005;
5. Copy of "Potential Denial" issued by WVMi on December 28, 2004;
6. Copy of "Notification of Hearing" letter dated March 31, 2005;
7. Copy of "Hearing Rescheduled" letter dated May 16, 2005;
8. written argument filed on June 21, 2005 by Alva Page, III, counsel for the Bureau for Medical Services; and
9. written argument filed on June 28, 2005 by Charles B. Rogers, counsel for the Claimant.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. A PAS-2000 for Mary McDermott was completed by Julia Foster of WVMi on or about November 19, 2004.
2. By letter dated January 11, 2005, the claimant was informed by WVMi that she did not meet medical eligibility requirements for the Aged and Disabled Waiver Program, and as such, her application for Waiver services was denied.
3. The Claimant completed a "Request for Hearing" dated January 13, 2005, and was received by the WVDHHR Bureau for Medical Services on or about January 19, 2005.
4. A hearing was conducted in the DHHR offices in Parkersburg, West Virginia on June 9, 2005.
5. During the course of testimony, Julia Foster of WVMi testified that as of November 19, 2004, the Claimant qualified for three (3) total deficits: one (1) point for No. 26(b) (physical assistance for bathing); one (1) point for No. 26(d) (physical assistance for grooming); and one point for No. 26(e) (bladder incontinence).
6. Witnesses for the claimant asserted that the claimant should be awarded two (2) additional deficits, alleging one (1) point for No. 26(c) (physical assistance for dressing), and one point

CONCLUSIONS OF LAW

1. Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policies and Procedures Manual, 11-3-03, §570.1.b MEDICAL CRITERIA, states in pertinent part: An individual must have five deficits on the PAS to qualify medically for the ADW Program.

VIII. DECISION

Based upon the testimony adduced at the hearing, and in consideration of the written record, [REDACTED] did not meet the eligibility requirements for the ADW Program as of November 19, 2004. The Claimant and/or her witnesses failed to present satisfactory evidence that the claimant had two (2) additional deficits, one (1) point for No. 26(c) (physical assistance for dressing), and one point for No. 25 (unable to vacate building). Based upon the evidence presented, the Claimant had three (3) deficits as of November 19, 2004. Five (5) deficits are required to be eligible for the Aged and Disabled Waiver program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision. (Form IG-BR-46)

Form IG-BR-29.