



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 6, 2005

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 4, 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 continue to require the type of services provided in a skilled nursing care facility and are medically eligible for the Aged/Disabled Waiver Services Program.

It is the decision of the State Hearing Officer to reverse the action of the Department (WVMI) to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program. See Section VIII.

Sincerely,

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

cc: Board of Review
Kay Ikerd, BOSS
Julia Foster, WVMI
[REDACTED] CCIL

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

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 May 4, 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 May 4, 2005 on a timely appeal filed February 15, 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 Julia Foster 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 granddaughter.
3. _____, Claimant's caregiver.
4. _____ CCIL casemanager.
5. _____ Co. Action Group R.N.
6. Kay Ikerd, BOSS (testifying by speaker phone).
7. Julia Foster, R. N., WVMI (testifying 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).

- “ #2 Copy of hearing request.
- “ #3 Copy of PAS-2000 denied 1-6-04 (6 pages).
- “ #4 Copy of potential denial letter 1-12-05 (2 pages).
- “ #5 Copy of additional documentation (2 pages).
- “ #6 Copy of denial letter 2-8-05 (2 pages).
- “ #7 Copy of reevaluation request 11-12-04.

VII. FINDINGS OF FACT

1. The claimant was a recipient of services under the Title XIX Aged/Disabled Waiver (ADW) Services Program when a PAS-2000 was completed by Julia Foster, R. N. from West Virginia Medical Institute (WVMI) on 1-6-05 (Exhibit #3) and was denied for medical eligibility.

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. Findings of PAS-2000 by Julia Foster on 1-6-05 (Exhibit #3) reflected that the claimant had four (4) deficits in the activities of daily living in the areas of being physically unable to vacate the building in an emergency, bathing, dressing and bladder incontinence and that the claimant did not meet the criteria for medical eligibility for the Title XIX ADW Program as she did not have the required five (5) deficits.

4. Ms. Foster testified that additional information was received (Exhibit #5) but did not change her findings.

5. Denial letter issued on 2-8-05 (Exhibit #6) reflected that the claimant had only four (4) deficits in the areas of vacating the building in an emergency, bathing, dressing, and bladder incontinence.

6. Ms. _____ testified that meat has to be put in a food processor before she can eat it, that her braces let her walk but do not take care of the problem, that she has post-polio syndrome and has to have someone to hold on to in order to get to her walker, and that she is tired all the time.

7. Ms. _____ testified that the claimant is going downhill, that she has to have help getting out of bed, that it takes her 45-50 minutes to get out of bed and get dressed and go to the bathroom, that she can do these things but it is much easier with assistance, that she has been with the claimant for five (5) years and has never seen her wash her hair in the sink, that her food has to be cut up for her, that if she is not in her lift chair, she has to have help getting up, and that she has to help her get out of bed at least three (3) times a week.

8. Ms. _____ testified that the claimant does have to have someone help her transfer from the couch, chair and sometimes from the bed, that the granddaughter does her nails, that she has to be held on to unless she is in the lift-chair, that she needs someone to help her get off the toilet, and that she has never seen her get up on her own.

9. Ms. _____ testified that the claimant needs help with transferring, that she uses a lift-chair in the living room but needs help getting out of any other chair, that she does her toenails for her, and that she never walks alone.

10. Ms. Foster testified that the caregiver confirmed on the day of the assessment that the client does her own hair, that the claimant stated that she was able to file her nails, that she did not witness the claimant transferring or walking, and that there was no report of difficulty getting out of bed.

11. The only areas of dispute with the PAS-2000 completed by Ms. Foster on 1-6-05 for which a deficit could be awarded is in the area of transferring and grooming. The State Hearing Officer is convinced by the evidence and testimony that the claimant requires one-person assistance with transferring. The State Hearing Officer is convinced that the claimant's physical condition would not allow her to transfer without physical assistance and Ms. Foster testified that she did not witness the claimant transferring. The State Hearing Officer does not find that a deficit can be awarded for grooming. However, since the State

Hearing Officer finds that an additional deficit should be awarded in the area of transferring, the claimant has five (5) deficits and does continue to meet the criteria for medical eligibility for the ADW Program as five (5) deficits are required.

12. Since a finding of eligibility has been made, the claimant is eligible for Level of Care B based on the following:

Item #23 4 points

Item #24 0 point

Item #25 1 point

Item #26 8 points

Total of 13 points for Level of Care B which is three (3) hours per day or 93 hours per month.

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."

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 reverse the action of WVMH to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program. The claimant is eligible for Level of Care B for three (3) hours per day or 93 hours per month with reevaluation due in January, 2006.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.