



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

April 15, 2005

[REDACTED]

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 12, 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
Michelle Wiley, 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 April 12, 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 April 12, 2005 on a timely appeal filed January 24, 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 Michelle Wiley 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. _____ CCIL RN.
- 3 Kay Ikerd, BOSS (testifying by speaker phone).
- 4 Michelle Wiley, 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 10-25-04 (5 pages).
- “ #4 Copy of potential denial letter 12-2-04 and additional documentation (6 pages).
- “ #5 Copy of denial letter 1-13-04 (2 pages).

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 Michelle Wiley, R. N. from West Virginia Medical Institute (WVMI) on 10-25-04(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 Michelle Wiley, R. N. from WVMI, on 10-25-04 and was denied for medical eligibility for the Title XIX ADW Program (Exhibit #3).

4. Findings of PAS-2000 by Michelle Wiley on 10-25-04 (Exhibit #3) reflected that the claimant had one (1) deficit in the activities of daily living in the area of dressing 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.

5. Ms. Wiley testified that she reviewed the findings of the PAS-2000 with Ms. _____ and that she was in agreement with the findings.

6. Testimony from the Ms. _____ indicated that she felt that the assessment was more of a mental assessment than physical, that she told Ms. Wiley that she takes baths because she had no shower chair but would take showers if she had one and that was not included on the assessment, that there were things not put on the assessment that she told her, that she now has a shower chair, that if she has to fix her hair other than brushing it, that she would need assistance, that she uses the walker at times in the home rather than holding onto the walls, that Ms. Wiley did not appear to be focused on her as she stopped her interview to put information in her computer regarding another client, that she cannot open her doors at her home and that it would take her 15-20 minutes to get out in an emergency and that she would panic, that she needs physical assistance with bathing, grooming, walking, transferring, and vacating the building in an emergency, that she needs help getting up when she falls, that she needs help getting in and out of a bathtub.

7. Testimony from Ms. _____ indicated that Ms. _____ walks by using the walls in her home, that she needs the walker brought to her and positioned so she can use it, that she could not get up by herself if she falls, that she needs one-person assistance with transferring, walking, grooming, bathing and vacating the building in an emergency.

8. Testimony from Ms. Wiley indicated that she gave ample time for Ms. _____ to answer her questions, that she did address all of the elements, that she did enter information about another client at the beginning or end of her assessment with Ms. _____, that she gave options to Ms. _____ about vacating the building in an emergency such as independently, with supervision, or physically or mentally unable and she chose with supervision, and that Ms. _____ had no objection to her entries.

9. Testimony from Ms. _____ indicated that the Ms. Wiley entered information on another client during the middle of her interview after asking if she was suicidal.

10. The areas of dispute with the PAS-2000 completed by Ms. Wiley on 10-25-04 for which a deficit could be awarded involve the areas of bathing, grooming, walking, transferring, and vacating the building in an emergency (items #26 b , d, h, I, and #25). The State Hearing Officer took judicial notice that the claimant's Cerebral Palsy severely restricted her mobility and that her condition would have been the same at the time of the assessment on 10-25-04. That being the case, the State Hearing Officer is

convinced that the claimant would be physically unable to vacate the building in an emergency and would need physical assistance and a deficit is awarded in this area. The claimant is able to walk by holding onto walls and using a walker and a deficit cannot be awarded in this area. The claimant informed Ms. Wiley during the assessment that she needed someone to stand by while she bathed in case she falls and no deficit could be awarded for this area. The claimant informed Ms. Wiley during the assessment that she needed no assistance with grooming and no deficit can be awarded in this area. While the claimant and Ms. [REDACTED] testified that the claimant needed physical assistance with transferring, no testimony was offered to corroborate a need for physical assistance with transferring and a deficit cannot be awarded in this area. Only one (1) additional deficit can be awarded in the area of vacating the building in an emergency.

11. The claimant has only two (2) deficits and does not meet the criteria for medical eligibility for the ADW Program as five (5) deficits are required.

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 uphold the action of WVMI to deny medical eligibility 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.