



**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

December 16, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 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 Hearings 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 meet the medical criteria to be eligible for the Title XIX Aged/Disabled Waiver Services Program.

It is the decision of the State Hearings Officer to reverse 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: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Bureau for Senior Services
Michelle Wiley, WVMI
[REDACTED] All Care Home & Comm. Services

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

_____,
Claimant,

v.

Action Number: 05-BOR-5932

**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 December 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 convened on December 15, 2005 on a timely appeal, filed June 8, 2005. It should be noted that the hearing was originally scheduled for November 29, 2005 by State Hearing Officer Shawn Taylor as a telephone conference hearing at claimant's request but was rescheduled when the claimant requested the hearing be convened in the _____ County DHHR office and the case was reassigned to State Hearing Officer Thomas M. Smith on October 28, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Title XIX Aged/Disabled Wavier Services 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 a skilled nursing facility (if not for the waiver services).

III. PARTICIPANTS:

1. [REDACTED], Claimant.
2. [REDACTED] All Care Home & Comm. Services, Casemanager.
3. [REDACTED] Claimant's homemaker.
4. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
5. Michelle Wiley, West Virginia Medical Institute R.N. (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. QUESTIONS 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.

(It should be noted that the hearing was originally scheduled as a reduction in level of care hearing but the correct issue is denial of medical eligibility).

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:

Department's Exhibits:

- D-1 Copy of regulations (2 pages).
- D-2 Copy of hearing request received 6-8-05.
- D-3 Copy of PAS-2000 completed 5-5-05 (7 pages).
- D-4 Copy of potential denial letter dated 5-12-05 (2 pages).
- D-5 Copy of denial letter dated 6-1-05 (2 pages).
- D-6 Copy of reevaluation request.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2000 was completed by Michelle Wiley of WVMi on 5-5-05 and was denied for medical eligibility.
- 2) The PAS-2000 completed by Ms. Wiley on 5-5-05 (Exhibit #D-3) determined that only four (4) deficits existed in the functional activities of being mentally unable to vacate the building in an emergency, bathing, dressing and grooming.
- 3) Ms. Wiley testified that she reviewed the PAS-2000 on 5-5-05 with the claimant and his wife and that both were in agreement with the findings.

- 4) The claimant was notified of potential denial 5-12-05 (Exhibit #D-4) due to a finding of only four (4) deficits.
- 5) The claimant was notified of denial on 6-1-05 (Exhibit #D-5) and requested a hearing on 6-8-05 (Exhibit #D-2).
- 6) Testimony from the claimant indicated that he can feed himself but has trouble eating tough foods and eats soup and frozen dinners, that he cannot use a wheelchair in his apartment, that the homemaker helps him in and out of the bathtub, that he gives his own insulin shots but sometimes has a friend give him the larger shots, that he has upper set of false teeth but no lower ones, that he won't eat some foods because he cannot chew them, that he does not think that Ms. Wiley asked him about cutting his meat, and that he needs help sometimes but not every day with cutting meat.
- 7) Testimony from Ms. [REDACTED] indicated that the claimant has been on the ADW Program since October, 2001, that the homemaker finds him sometimes passed out on the floor due to ammonia level elevation, and that he cannot give himself the larger dose of shots.
- 8) Testimony from Ms. Wiley indicated originally that eating would have to be total feed before a deficit could be given but Ms Wiley then testified that requiring physical assistance could give the claimant a deficit if that was indicated, that he did not need physical assistance more than 50% of the time, that injections are considered skilled needs and homemakers cannot give shots, and that she discusses cutting meat on all visits and Mr. _____ did not state he could not cut up his meat.
- 9) The areas of dispute include the functional activities of eating and administering medications. The evidence and testimony show that the claimant sometimes needs assistance with cutting meat but it was unclear whether this was reported during the completion of the PAS-2000 on 5-5-05. Ms. Wiley testified that she specifically discusses cutting meat when discussing eating and that Mr. _____ did not state that he needed meat cut for him. Thus, the State Hearing Officer finds that no deficit can be given for the functional activity of eating. In regard to administering medications, the claimant testified that he is unable to administer the higher level of insulin shots and requires someone else (a friend) to give him the shot. Ms. Wiley documented in the PAS-2000 completed on 5-5-05 that the client was able to administer the low dose of insulin himself but was unable to administer the larger dose as he was unable to use the syringe. The claimant testified that he is able to give most of his shots himself. However, the documentation on the PAS-2000 states that when the claimant's blood sugar or ammonia levels are elevated, he is totally disoriented, that confusion occurs frequently, and that judgment is impaired at those times. The documentation and testimony from Ms. Wiley indicated that she assigned a deficit for being unable to mentally vacate the building in an emergency when the claimant's blood sugar or ammonia levels are elevated. The State Hearing Officer finds that the same consideration should have been given in administering medications as the claimant would be unable to self-administer his medications when blood sugar or ammonia levels are elevated. In addition, whether the claimant is able to self-administer medications most of the time would not be relevant if the claimant suffered severe consequences due to missing several shots. In addition, the claimant has been on the Title XIX ADW Program since October, 2001 and his prognosis is deteriorating as he has end stage liver

disease and his condition has not improved since October, 2001. Therefore, the State Hearing Officer finds that a deficit should have been assigned for administering medications. The claimant has a total of five (5) deficits in the functional activity areas.

- 10) 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."

VIII. CONCLUSIONS OF LAW:

Regulations in Section 570.1.b require that five (5) deficits exist in the functional activity areas and the claimant was determined to have only four (4) deficits on the PAS-2000 completed on 5-5-05 in the areas of being mentally unable to vacate the building in an emergency, bathing, dressing, and grooming. The areas of dispute involved eating and medication administration and the State Hearing Officer was convinced by the testimony of the claimant and the documentation of Ms. Wiley that a deficit should have been assigned in the area of medication administration. The claimant has five (5) deficits and continues to meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program.

IX. DECISION:

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. The claimant will receive Level of Care B for 93 hours per month or three (3) hours per day based on a total of 14 points (6 points for item #23, 1 point each for item #25, 26 b, c d, f, h and i, and 1 point for item #28).

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of December, 2005.

**Thomas M. Smith
State Hearing Officer**