



**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 1, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 29, 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 do not 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 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: Erika H. Young, Chairman, Board of Review
Libby Boggess, Bureau for Senior Services
Debra Lemasters, WVMI
[REDACTED] CCIL

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

_____,

Claimant,

v.

Action Number: 05-BOR-6534

**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 November 29, 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 November 29, 2005 on a timely appeal, filed August 26, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. It should also be noted that the hearing was originally scheduled for 11-8-05 and 11-4-05 but was rescheduled initially at Department's request and then at claimant's request.

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. _____, Claimant.
2. _____, Claimant's relative.
3. [REDACTED] Claimant's homemaker.
4. [REDACTED] CCIL Casemanager.
5. Libby Boggess, Bureau for Senior Services (participating by speaker phone).
6. Debra Lemasters, West Virginia Medical Institute (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.

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 8-26-05.
- D-3 Copy of PAS-2000 completed 8-1-05 (5 pages).
- D-4 Copy of potential denial letter dated 8-4-05 (2 pages).
- D-5 Copy of additional information not considered (5 pages).
- D-6 Copy of denial letter dated 8-19-05 (2 pages).
- D-7 Copy of evaluation request (2 pages).

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 Debra Lemasters of WVMi on 8-1-05 and was denied for medical eligibility.
- 2) The PAS-2000 completed by Ms. Lemasters on 8-1-05 (Exhibit #D-3) determined that only two (2) deficits existed in the functional activities of being physically unable to vacate the building in an emergency and bathing.
- 3) Ms. Lemaster testified that she completed the PAS-2000 on 8-1-05 and explained that her findings were based on the information given by the claimant, her homemaker,

casemananager, and R.N. and that accurate information was important and that all agreed that they understood her explanation.

- 4) The claimant was notified of potential denial 8-4-05 (Exhibit #D-4) due to a finding of only two (2) deficits and additional documentation was received (Exhibit #D-5) which was not reviewed as it was not received within the two (2) week potential denial period.
- 5) The claimant was notified of denial on 8-19-05 (Exhibit #D-6) and requested a hearing on 8-26-05 (Exhibit #D-2).
- 6) Testimony from Ms. _____ indicated that she gets embarrassed to tell things about herself, that she cannot cut her toenails as her daughter has to do it, that she cannot shave her legs, that she does sometimes need help with dressing and did not understand at the time the PAS-2000 was completed, that her homemaker helped her about half the time with dressing, that she had incontinence daily and wears panty liners but did not really know what incontinence meant, that her homemaker would wash her hair over the sink sometimes, that she was aware of why Ms. Lemaster was there but did not remember anyone other than her homemaker being there.
- 7) Testimony from Ms. _____ indicated that the claimant cannot administer her medication, that she monitors and administers her medication for her, that sometimes she is lucid and other times forgets things, that about half the time she needed help with dressing, that at times, she cannot get out of the chair.
- 8) Testimony from Ms. [REDACTED] indicated that the claimant is on morphine and oxycodone and would be disoriented with all the medications she takes, that the doctor statement dated 8-17-04 says she would need nursing home care, that the claimant told her that she has bladder incontinence every day.
- 9) Testimony from Ms. Lemasters indicated that she uses the word incontinence and then says bladder control or leakage and that the claimant told her she used no pads and the homemaker acknowledged no evidence of incontinence in the laundry, that the claimant needed prompting and supervision with medication.
- 10) The areas of dispute include the major life areas of dressing, grooming, bladder incontinence, transferring and medication administration. The evidence and testimony show that the claimant and homemaker reported on 8-1-05 that she dresses herself and grooms herself the majority of the time but does need some assistance with dressing and grooming. The fact that some assistance is needed with dressing and grooming supports a finding of a deficit in those two (2) major life areas. In regard to bladder incontinence, the claimant reported to Ms. Lemaster that it occurred 1-2 times a week and the homemaker agreed as she did the claimant's laundry so no deficit can be given for this major life area. In regard to transferring, Ms. _____ testified that the claimant sometimes could not get up out of the chair but there was no indication on the PAS-2000 that the claimant needed any assistance with transferring and no deficit can be given for that major life area. In regard to medication administration, the claimant reported that she needed prompting and supervision and Ms. _____ testified that she monitors and administers the claimant's medication. There was no testimony that the claimant could not take her own medication, but the testimony supported a finding that she needs only prompting and supervision. Therefore, a deficit could not be awarded

for that major life area. The claimant has a total of four (4) deficits in the major life areas.

- 11) 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 major life areas and the claimant was determined to have only two (2) deficits on the PAS-2000 completed on 8-1-05 in the areas of being physically unable to vacate the building in an emergency and bathing. The areas of dispute involved dressing, grooming, bladder incontinence, transferring, and medication administration and the State Hearing Officer was convinced by the testimony of the claimant and her witnesses that the claimant required physical assistance with dressing and grooming but was not convinced that the claimant needed physical assistance with transferring or that she had bladder incontinence of at least three (3) times a week or that she needed her medications administered to her. The claimant has only four (4) deficits and does not 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 uphold the action of the Department (WVMI) to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of December, 2005.

Thomas M. Smith
State Hearing Officer