



**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 2, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 30, 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
Kim Sang, WVMI
[REDACTED] CWVAS

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

_____,

Claimant,

Action Number: 05-BOR-6703

**v.
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 30, 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 30, 2005 on a timely appeal, filed September 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. _____, Claimant.
2. _____, Claimant's daughter-in-law.

3. [REDACTED] Casemanager, Central WV Aging Services.
4. Libby Boggess, Bureau for Senior Services (participating by speaker phone).
5. Kim Sang, 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 9-28-05.
- D-3 Copy of PAS-2000 completed 8-29-05 (8 pages).
- D-4 Copy of potential denial letter dated 9-6-05 (2 pages).
- D-5 Copy of additional information not considered (3 pages).
- D-6 Copy of denial letter dated 9-21-05 (2 pages).
- D-7 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 Kim Sang of WVMI on 8-29-05 and was denied for medical eligibility.
- 2) The PAS-2000 completed by Ms. Sang on 8-29-05 (Exhibit #D-3) determined that only three (3) deficits existed in the functional activities of being physically unable to vacate the building in an emergency, grooming and bladder incontinence.
- 3) Ms. Sang testified that she reviewed the PAS-2000 on 8-29-05 with the claimant and the casemanager, Ms. [REDACTED] and that both were in agreement with the findings.
- 4) The claimant was notified of potential denial 9-6-05 (Exhibit #D-4) due to a finding of only three (3) 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 9-21-05 (Exhibit #D-6) and requested a hearing on 9-28-05 (Exhibit #D-2).
- 6) Testimony from Ms. _____ indicated that the claimant needs help getting in and out of the bathtub, that she takes showers and sits on a chair and has a handheld shower but needs help getting in and out, that she does not always understand things and does not hear properly, that she can wash herself but not her feet, and that her medication is now set up monthly because she forgets.
- 7) Testimony from the claimant indicated that she had no disagreement with the findings of the PAS-2000.
- 8) Testimony from Ms. [REDACTED] indicated that she was surprised at the information the claimant reported to Ms. Sang on 8-29-05 and cannot refute what was reported, that the claimant did tell Ms. Sang she could bathe herself, and that the claimant was improved over the previous year and from when she saw her in March, 2005.
- 9) The areas of dispute include the functional activity areas of bathing and medication administration. The evidence and testimony show that the claimant reported on 8-29-05 that she was able to bathe (shower) herself and that she showered in the mornings before the homemaker arrived. Ms. [REDACTED] confirmed that the claimant reported to Ms. Sang on 8-29-05 that she could bathe herself. Therefore, a deficit cannot be given to the major life area of bathing. In regard to medication administration, the claimant reported on 8-29-05 that she could administer her own medications. _____ testified that she sets up the claimant's medications on a monthly basis but there was no testimony that the claimant could not take the medication herself. Therefore, while the setup of the claimant's medication may have to be supervised, a deficit cannot be given for the major life area of medication administration. The claimant has a total of three (3) 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 three (3) deficits on the PAS-2000 completed on 8-29-05 in the areas of being physically unable to vacate the building in an emergency, grooming, and bladder incontinence. The areas of dispute involved bathing and medication administration and the State Hearing Officer was convinced by the testimony of the claimant and Ms. [REDACTED] that the information documented by Ms. Sang on the PAS-2000 completed 8-29-05 was accurate. The claimant has only three (3) 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 2nd Day of December, 2005.

Thomas M. Smith
State Hearing Officer