



**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

May 15, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 12, 2006. Your hearing request was based on the Department of Health and Human Resources' 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 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 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  
[REDACTED], WVMH  
[REDACTED], CCIL

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

\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 06-BOR-1008**

**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 May 12, 2006 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 May 12, 2006 on a timely appeal filed January 30, 2006.

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 April 13, 2006 but was rescheduled at claimant's request and that the hearing was convened in the \_\_\_\_\_ County DHHR office.

**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. [REDACTED], Claimant's homemaker.
3. [REDACTED], CCIL casemanager.
4. Kay Ikerd, Bureau for Senior Services (participating by speaker phone).
5. [REDACTED], 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:**

Chapter 500 Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03, Section 570.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- 1 Copy of regulations (8 pages).
- 2 Copy of hearing request received 1-30-06 (2 pages).
- 3 Copy of PAS-2005 completed 12-29-05 (7 pages).
- 4 Copy of potential denial letter dated 1-4-06 (2 pages).
- 5 Copy of denial letter 1-20-06 (2 pages).
- 6 Copy of evaluation request.

##### **Claimant's Exhibits:**

None.

#### **VII. FINDINGS OF FACT:**

- 1) The claimant was a recipient for the Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2005 was completed by Kathy Gue of WVMI on 12-29-05 and was denied for medical eligibility (Exhibit #3).
- 2) The PAS-2005 completed by Ms. Gue on 12-29-05 determined that only four (4) deficits existed in the functional activities of eating, bathing, dressing, and grooming.
- 3) Ms. Ikerd testified about the regulations (Exhibit #1).
- 4) Ms. [REDACTED] testified that she completed the PAS-2005 on 12-29-05 and that she determined that the claimant met a deficit in the areas of eating, bathing, dressing, and grooming and that she explained the importance of the assessment and that no one voiced any disagreement with her findings.

- 5) The claimant was notified of potential denial on 1-4-06 (Exhibit #4), a denial letter was issued on 1-20-06 (Exhibit #5) and a hearing request was received by the Bureau for Medical Services on 1-30-06 (Exhibit #2), by the Board of Review on 3-1-06, and by the State Hearing Officer on 3-6-06.
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the area of transferring.
- 7) Testimony from the claimant revealed that she suffers from peripheral neuropathy, that she must have assistance getting in and out of her recliner, and that she has neuropathy in her hands and arms.
- 8) Testimony from Ms. [REDACTED] revealed that she has to help the claimant get in and out of bed, that she helps her get in and out of the shower, that she cannot get out of the recliner by herself, that her feet go numb and she falls sometimes when she uses the walker, that she has to supervise her when she uses the walker, that Ms. [REDACTED] went down the list during the assessment and asked the claimant to get up out of the chair and the claimant used the walker but had to rock back several times to do it, that Ms. [REDACTED] told her not to help the claimant get up, and that the claimant has a hard time balancing herself.
- 9) Testimony from Ms. [REDACTED] revealed that the claimant has to sit in a rocker when the homemaker leaves, that she has to leave her door unlocked so the homemaker can get in the next morning to help her get out of bed, that due to her neuropathy, the claimant has to have help getting up from the bed and chair.
- 10) Testimony from Ms. [REDACTED] revealed that she observed the claimant transferring and ambulating and that the claimant used the rolling walker to do so.
- 11) The area of dispute involved transferring. The State Hearing Officer finds that the claimant does require one-person assistance (Level III) with transferring. Testimony from the claimant and her witnesses revealed that she requires one-person assistance with getting out of the bed and chair. While Ms. [REDACTED] testified that the claimant demonstrated transferring with the rolling walker, the fact remains that the claimant requires one-person assistance at times with transferring. In addition, Ms. [REDACTED] did not testify that she witnessed the claimant transferring from the bed and the claimant's witnesses testified that the claimant has to have one-person assistance in getting out of bed. The preponderance of the evidence and testimony show that the claimant requires one-person assistance (Level III) with transferring and a deficit is awarded in that area.
- 12) 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. Decubitus - Stage 3 or 4
- B. Unable to vacate a building-a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alheimers, or related condition. (Item 25, I and 33, on the PAS-2005).

- C. 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 total incontinent-defined as when the recipient has no control of bowel or bladder functions at any time.)

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. 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. (Item 26 on the PAS-2005)

E Individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube, or eye by some one other than the recipient at all times."

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Regulations in Section 570.1.b require that five (5) deficits exist in the major life areas to meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program.
- 2) The claimant was determined to have only four (4) deficits on the PAS-2005 completed on 12-29-05 in the areas of eating, bathing, dressing, and grooming.
- 3) The area of dispute involved transferring. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant qualified for a deficit in the area transferring and one (1) additional deficit is awarded for this area.
- 4) The claimant qualifies for five (5) deficits and meets the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as five (5) deficits are required.

#### **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 qualifies for 12 points (5 under item #23 and 7 under item #25) for Level of Care B for three (3) hours per day or 93 hours per month.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 15th Day of May, 2006.**

---

**Thomas M. Smith  
State Hearing Officer**