



**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**

August 30, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 29, 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,

_____ M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, Bureau for Senior Services
_____, WVMI
_____, A Special Touch for Seniors

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

_____,
Claimant,

v.

Action Number: 06-BOR-1620

**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 telephone conference fair hearing concluded on August 29, 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 August 29, 2006 on a timely appeal filed April 7, 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 July 5 and July 14, 2006 but was rescheduled originally at the request of the Department and then at the claimant's request. It should also be noted that all parties participated by telephone conference 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 daughter.
3. _____, Casemanager, A Special Touch for Seniors.
4. Libby Boggess, Bureau for Senior Services.
5. _____, West Virginia Medical Institute.

Presiding at the Hearing was _____ 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 (2 pages).
- #3 Copy of PAS-2005 completed 3-6-06 (8 pages).
- #4 Copy of potential denial letter dated 3-16-06 (2 pages).
- #5 Copy of denial letter dated 3-31-06 (2 pages).
- #6 Copy of evaluation request (5 pages).
- #7 Copy of additional information and revised PAS-2005 (10 pages).

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 _____ of WVMI on 3-6-06 and was denied for medical eligibility (Exhibit #3).
- 2) The PAS-2005 completed by _____ on 3-6-06 determined that only three (3) deficits existed in the functional activities of bathing, dressing and grooming.
- 3) Ms. Boggess testified about the regulations (Exhibit #1). Ms. Boggess also testified that additional information was received outside of the two (2) week potential denial period but that WVMI reviewed the information anyway.

- 4) [REDACTED] testified about the PAS-2005 completed 3-6-06 (Exhibit #3). [REDACTED] testified that she awarded three (3) deficits in the areas of bathing, dressing, and grooming, that additional information was received but did not change the number of deficits (Exhibit #7) .
- 5) The claimant was notified of potential denial on 3-16-05 (Exhibit #4) and of denial on 3-31-06 (Exhibit #5) and a hearing request was received by the Bureau for Medical Services on 4-7-06, by the Board of Review on 5-12-06, and by the State Hearing Officer on 5-22-06. An additional denial letter was issued on 5-26-06 after additional information was received outside the two (2) week potential denial period and was considered but did not change the decision of [REDACTED] .
- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of incontinence, walking, transferring, wheeling, and vacating the building.
- 7) In the area of incontinence, [REDACTED] testified that the claimant should be awarded a deficit for incontinence of bladder and bowel as she has no control even though she may be able it to the bathroom at times.
- 8) In the area of walking, Ms. _____ testified that the claimant cannot walk at all, that she has no feeling in her legs from the knees down due to diabetes, that she falls after trying to walk 2-3 feet, and that she is too heavy for the walker. Ms. [REDACTED] testified that the claimant needs assistance with ambulation, that she cannot use the walker and tried to walk holding onto furniture and walls, that she is at risk for broken bones, and that Ms. [REDACTED] recorded on page 5 of the PAS-2005 that the claimant stated that she tries to walk by herself. Ms. [REDACTED] testified that the claimant was awarded a Level II for walking (supervision/assistive device) as the claimant told her she tries to do it by herself.
- 9) In the area of transferring, Ms. _____ testified that she has to assist the claimant getting in and out of bed and that she uses a bedside commode. Ms. [REDACTED] testified that the claimant is unable to transfer without physical assistance. Ms. [REDACTED] indicated in the PAS-2005 that the claimant informed her that she needed someone to help her out of bed at times and that her daughter has to assist her getting out of bed by getting her feet to the floor.
- 10) In the area of wheeling, Ms. _____ testified that the claimant can roll back with the wheelchair on the linoleum but cannot use the wheelchair by herself throughout the rest of the house as it is carpeted. Ms. [REDACTED] indicated on the PAS-2005 that the claimant informed her that she wheels herself through the house at times, that she stated she did not need to be wheeled, and that she stated she could do it herself if she was not too weak.
- 11) In the area of vacating the building, testimony on behalf of the claimant indicated that she could not vacate the building. However, this area is dependent on a Level III finding in the areas of either walking or orientation.
- 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."

13) The areas of dispute in regard to deficits involved incontinence, walking, transferring, wheeling, and vacating the building. The State Hearing Officer finds that the claimant requires one-person assistance at times with walking. The regulations do not state that the one-person assistance (Level III) be required at all times. Therefore, an additional deficit is awarded in the area of walking. In addition, since a finding of Level III is awarded in the area of walking, the claimant qualifies for an additional deficit for vacating the building. The State Hearing Officer finds that the claimant requires one-person assistance at times with transferring. The regulations do not state that the one-person assistance be required at all times. Therefore, an additional deficit is awarded in the area of transferring. The State Hearing Officer finds that the PAS-2005 accurately awarded a Level II finding in the area of incontinence as the evidence and testimony show that the claimant does not have total incontinence. The State Hearing Officer finds that, although the claimant may have some difficulty with wheeling, she is able to wheel herself on occasions and only needs occasional assistance with wheeling. Thus, the State Hearing Officer finds that the PAS-2005 accurately awarded a Level III finding of situational assistance with wheeling.

13) The State Hearing Officer finds that the claimant qualifies for additional deficits in the areas of walking (Level III), transferring (Level III) and vacating the building. The claimant has a total of six (6) deficits. The claimant also is awarded an additional point for purposes of Level of Care determination in the areas of walking, transferring, and vacating the building for a total of three (3) additional points.

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 three (3) deficits on the PAS-2005 completed on 3-6-06 in the areas of bathing, dressing and grooming.

- 3) The areas of dispute involved incontinence, walking, transferring, wheeling, and vacating the building. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant qualified for additional deficits in the areas of walking and transferring. In addition, since the claimant was awarded a Level III finding in the area of walking, she also qualified for a deficit in the area of vacating the building. The State Hearing Officer determined that the PAS-2005 completed 3-6-06 correctly assessed the claimant in the areas of incontinence and wheeling.
- 4) The claimant qualifies for six (6) 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 is awarded three (3) additional deficits for a total of six (6) deficits. The claimant is also awarded three (3) additional points toward determining Level of Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of August, 2006.

M. Smith
State Hearing Officer