



**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

June 30, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 27, 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], WVMI
[REDACTED], CCIL

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

—,

Claimant,

v.

Action Number: 06-BOR-1777

**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 June 27, 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 June 27, 2006 on a timely appeal, filed April 27, 2006.

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. [REDACTED], Claimant's homemaker.
3. [REDACTED], Casemanager, CCIL.
4. Kay Ikerd, Bureau for Senior Services (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 4-27-06 (2 pages).
- D-3 Copy of PAS-2005 completed 3-30-06 (8 pages).
- D-4 Copy of potential denial letter dated 4-6-06 (2 pages).
- D-5 Copy of denial letter dated 4-24-06 (2 pages).
- D-6 Copy of evaluation request.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of the Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2005 was completed by [REDACTED] of WVMi on 3-30-06 and was denied for medical eligibility (Exhibit #D-3).
- 2) The PAS-2005 completed by Ms. [REDACTED] on 3-30-06 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 #D-1).
- 4) Ms. [REDACTED] did not participate in the hearing. A request was received from Ms. Ikerd on 6-12-06 to reschedule the hearing and the State Hearing Officer denied the request as the reason was based on Ms. [REDACTED] having assessments scheduled the same day of the hearing.
- 5) The claimant was notified of potential denial on 4-6-06 (Exhibit #D-4), a denial letter was sent on 4-24-06 (Exhibit #D-5) and a hearing request was received by the Bureau

for Medical Services on 4-27-06, by the Board of Review on 5-19-06, and by the State Hearing Officer on 6-1-06 (Exhibit #D-2).

- 6) Testimony on behalf of the claimant disagreed with the findings of the PAS-2005 in the areas of walking and transferring. Testimony from Ms. [REDACTED] indicated that the claimant cannot walk as she can only take a step or two, that her lift chair and scooter are her life, that she goes to the bathroom in her scooter, that she assists the claimant by letting her hold onto her arms. Testimony from Ms. [REDACTED] indicated that without the lift chair, the claimant would not be able to transfer and that she can only take a couple steps when walking. Testimony from the claimant indicated that she would have asked Ms. [REDACTED] why she was turned down since she cannot walk but that she did not know how Ms. [REDACTED] would have answered.
- 7) The PAS-2005 reflected that Ms. [REDACTED] observed the claimant get out of her lift chair and walk 5-6 steps to her scooter to go to the bathroom, that she did not require the assistance of the homemaker, and that the claimant returned to the lift chair in the same manner. The PAS-2005 reflected that the claimant informed Ms. [REDACTED] that she ambulates at times in the home, using a cane.
- 8) There were two (2) areas of dispute in the areas of walking and transferring. The State Hearing Officer finds that while Ms. [REDACTED] observed the claimant walking 5-6 steps to get into her scooter and go to the bathroom, the claimant does require one-person assistance at times with walking. Ms. [REDACTED] testified that she assists the client by letting the client hold onto her arms when walking. Ms. [REDACTED] testified that the claimant can only take a few steps when she does walk. The preponderance of the evidence and testimony show that the claimant does require one-person assistance (Level III) with walking and an additional deficit is awarded in this area. The State Hearing Officer finds that the claimant is able to transfer with her lift chair and that no testimony was received during the hearing that the claimant required one-person assistance at times with transferring. Therefore, an additional deficit cannot be awarded in the area of transferring. However, since the claimant was awarded a Level III finding in the area of walking, she also is awarded an additional deficit for vacating the building and wheeling as she was awarded a Level III finding by Ms. [REDACTED] for wheeling.
- 9) 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 3/30/06 in the areas of eating, bathing, dressing, and grooming.
- (3) The areas of dispute involved walking and transferring. The State Hearing Officer was convinced by the evidence and testimony presented during the hearing that the claimant qualified for three (3) additional deficits in the areas of walking, vacating the building, and wheeling.
- (4) The claimant qualifies for seven (7) 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 17 points (4 in item #23, 12 in item #25, and 1 in item #33) and is eligible 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 30th Day of June, 2006.

**Thomas M. Smith
State Hearing Officer**