



**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

April 10, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 4, 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 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 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 Bogges, Bureau for Senior Services
[REDACTED], WVMI
[REDACTED], CCIL

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

_____,
Claimant,

v.

Action Number: 05-BOR-7090

**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 April 4, 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 April 4, 2006 on a timely appeal, filed December 7, 2005. It should be noted that the hearing was originally scheduled for February 21, 2006 but was rescheduled at claimant's request.

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. [REDACTED], Claimant.
2. [REDACTED], CCIL casemanager.
3. [REDACTED], Claimant's caregiver.
4. Libby Boggess, 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:

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 (6 pages).
- D-2 Copy of hearing request received 12-7-05 (2 pages).
- D-3 Copy of PAS-2000 completed 11-1-05 (6 pages).
- D-4 Copy of reevaluation request.
- D-5 Copy of contact and appointment letter (2 pages).
- D-6 Copy of potential denial letter dated 11-9-05 (2 pages).
- D-7 Copy of document received after 2 week period (3 pages).
- D-8 Copy of denial letter dated 11-29-05 (2 pages).

Claimants' Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of the Title XIX Aged/Disabled Waiver Services Program when a PAS-2005 was completed for reevaluation by [REDACTED] of WVMI on 11-1-05 and was denied for medical eligibility.
- 2) The PAS-2005 completed by Ms. [REDACTED] on 11-1-05 determined that only three (3) deficits existed in the functional activities of bathing, grooming, and dressing.
- 3) Ms. Boggess testified about the regulations (Exhibit #D-1).

- 4) Ms. [REDACTED] testified that an additional document was received after the two (2) week potential denial period and was not considered.
- 5) The claimant was notified of potential denial on 11-9-05 (Exhibit #D-6) and of denial on 11-29-05 (Exhibit #D-8) and a hearing request was received on 12-7-05 (Exhibit #D-2).
- 6) The claimant testified that his daughter gives him his medication, that she places the medication in his hand every day, that he cannot chop his food, that he chokes a lot, and that he has a bed sore and had it at the time of Ms. [REDACTED] assessment.
- 7) Ms. [REDACTED] testified that the claimant has been on the program for ten (10) years, that he is totally incontinent of the bladder, that his daughter assists him with medication on a daily basis, and that he had a bed sore at the time of Ms. [REDACTED]'s visit.
- 8) Ms. [REDACTED] testified that the claimant was too embarrassed to tell Ms. [REDACTED] about the bed sore and that he bumps into things and stumbles and falls.
- 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. #24: Decubitus - Stage 3 or 4 (Item 24 on PAS-2005)

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, Alzheimers, or related condition (Item 25, I and 33, on the PAS-2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS-2005).

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 medication 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."

- 10) The areas of dispute include decubitus, eating, bladder incontinence, and administration of medication. The claimant reported no bed sores to Ms. [REDACTED] during the assessment but testimony on behalf of the claimant during the hearing indicated that he had a bed sore at the time of the PAS-2005 assessment. However, there was no indication of the stage of the decubitus and absent any evidence or testimony that the bed sore was stage 3 or 4, the State Hearing Officer cannot award a deficit for debucitus. In regard to eating, the claimant testified during the hearing that he could not cut up his food but reported to Ms. [REDACTED] on 11-1-05 that he could cut up his food and needed only meal preparation assistance. Therefore, a deficit cannot be awarded for eating as meal preparation does not constitute a deficit. In regard to bladder incontinence, testimony on behalf of the claimant indicated

that he is totally incontinent of the bladder and a letter from his physician dated 11-17-05 states that he is totally incontinent. However, the claimant reported to Ms. [REDACTED] that he had wetness about twice a day and that he did not use any diapers or pads. No testimony was presented during the hearing to show that the claimant uses diapers or pads and total incontinence would require the use of such items. Thus, the State Hearing Officer cannot award a deficit in the area of bladder incontinence. In regard to administration of medications, the claimant testified that his daughter places his medicines in his hand daily but reported to Ms. [REDACTED] on 11-1-05 that his homemaker helped him with medications during the week and reminded him to take them but that he takes his medications himself evenings and weekends without anyone helping him. A deficit cannot be awarded for administration of medication.

VIII. CONCLUSIONS OF LAW:

- 1) 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 three (3) deficits on the PAS-2000 completed on 11-1-05 in the areas of bathing, grooming, and dressing. The areas of dispute involved decubitus, eating, bladder incontinence, and administration of medication but the preponderance of the evidence and testimony convinced the State Hearing Officer that the claimant did not meet an additional deficit in any of those areas. The State Hearing Officer is convinced that Ms. [REDACTED] documented her findings accurately from what the claimant reported and that there are no additional deficits. The claimant does not meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as he does not have five (5) deficits.

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 10th Day of April, 2006.

Thomas M. Smith
State Hearing Officer