



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

March 8, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 7, 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 continue to 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  
Brian Holstine, Bureau for Senior Services  
[REDACTED] WVMH  
SCAC  
[REDACTED] Home Health  
\_\_\_\_\_, Claimant's Rep.

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-7235**

**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 March 7, 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 March 7, 2006 on a timely appeal, filed January 3, 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. \_\_\_\_\_, Claimant's niece and Representative.
3. \_\_\_\_\_ Home Health.
4. \_\_\_\_\_ Claimant's caregiver.
5. Brian Holstine, Bureau for Senior Services (participating by speaker phone).
6. \_\_\_\_\_ 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 (8 pages).
- D-2 Copy of hearing request received 1-3-06 (2 pages).
- D-3 Copy of PAS-2000 completed 11-16-05 (6 pages).
- D-4 Copy of potential denial letter dated 12-9-05 (2 pages).
- D-5 Copy of denial letter dated 12-27-05 (2 pages).
- D-6 Copy of evaluation request (2 pages).
- D-7 Information received too late to consider (3 pages).

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

None.

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

- 1) The claimant was an applicant 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 11-16-05 and was denied for medical eligibility.
- 2) The PAS-2005 completed by Ms. \_\_\_\_\_ on 11-16-05 determined that only four (4) deficits existed in the functional activities of requiring physical assistance for eating, bathing, dressing and grooming.
- 3) Ms. \_\_\_\_\_ testified about her findings from the PAS-2005 and testified that additional information was received but was after the two (2) week potential denial period (Exhibit #D-7) and that the homemaker gave her all of the information and did not disagree with her findings.

- 4) Mr. Holstine testified that about the regulations (Exhibit #D-1).
- 5) The claimant was notified of potential denial on 12-9-05 (Exhibit #D-4) and of denial on 12-27-05 (Exhibit #D-5) and a hearing request was received by the Bureau for Medical Services on 1-3-06 (Exhibit #D-2), by the Board of Review on 1-23-06, and by the State Hearing Officer on 1-26-06.
- 6) Ms. \_\_\_\_\_ testified that the claimant could not find the stairway or walk down them in an emergency, that she knows only to push buttons #1 and #7 on the elevator, that she has the mental level of a 2 or 3 year old, that there are times she cannot make it to the bathroom, that she is not oriented to time, that she has to have help getting up, that she cannot walk without falling, that taking medications is a concern, that the PAS-2005 is marked on page 3 that she is not combative, disoriented but that she is.
- 7) Ms. [REDACTED] testified that the claimant does not know to go downstairs in an emergency, that she has fallen when the fire alarm goes off, that she is incontinent, that she cannot take her own medicine as Ms. \_\_\_\_\_ sets up her medications and she (Ms. [REDACTED]) pours them into the claimant's hand, that she told Ms. [REDACTED] that the claimant falls a lot, and that she has to physically assist her getting up and getting hold of the walker.
- 8) Ms. [REDACTED] testified that the claimant has a history of falling, that she is not comatose but is not oriented enough to make decisions, and that she could not vacate in an emergency.
- 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

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."

- 10) There were five (5) areas of dispute in the areas of transferring, walking, orientation, vacating the building in an emergency, and medication administration. The State Hearing Officer is convinced by the testimony of the claimant's witnesses that the claimant requires one-person assistance with transferring. Ms. \_\_\_\_\_ and Ms. [REDACTED] testified that the claimant needed assistance getting up and getting hold of the walker. In addition, Ms. [REDACTED] documentation on page 4 of the PAS-2005 states that the HM assisted the client up from the couch. Therefore, an additional deficit is awarded in the area of transferring. In the area of walking, there was testimony from the claimant's witnesses that the claimant has a history of falling and Ms. [REDACTED] documentation on page 4 of the PAS-2005 states that the claimant has mild difficulty standing, that gait was slow and unsteady, that the HM supervised the client as she ambulated, and that the client fell three weeks ago. Thus, even

with an assistive device (walker), Ms. [REDACTED] documentation showed that the claimant had difficulty ambulating and was subject to falling. Therefore, the State Hearing Officer finds that the claimant requires one-person assistance with walking and an additional deficit is awarded in the area of walking. In the area of orientation, the claimant was determined by Ms. [REDACTED] to have intermittent disorientation. The regulations under Section 570.1.b define a Level III under orientation as being totally disoriented or comatose. The State Hearing Officer finds that the claimant is not totally disoriented or comatose and an additional deficit cannot be awarded in that area. In the area of vacating the building in an emergency, a Level III must be awarded in the areas of walking or orientation before a deficit can be awarded in the area of vacating the building in an emergency and the claimant was awarded a Level II determination in both areas by Ms. [REDACTED]. However, the State Hearing Officer made a finding that Level III (one-person assistance) was required with walking and the claimant is awarded a deficit for vacating the building in an emergency. In the area of medication administration, Ms. [REDACTED] testified that Ms. [REDACTED] sets up the claimant's medications and that she pours them into the claimant's hand. Since homemakers are not permitted to administer medications and Ms. [REDACTED] testified only that medication administration was a concern, the State Hearing Officer finds that there was no conclusive evidence that the claimant was incapable of administering her own medications other than the setting up of medications. Therefore, an additional deficit cannot be awarded in the area of medication administration. The State Hearing Officer finds that the claimant has seven (7) deficits and is eligible for the Title XIX Aged/Disabled Waiver Services Program. The State Hearing Officer finds that the claimant's level of care will be Level B for three (3) hours per day or 93 hours per month based on the following points on the PAS-2005: item #23-4 points, item #25 a-1 points, b-1 point, c-1 point, d-2 points, e-1 point, f-1 point, g-1 point, h-2 points, i-2 points, vacating the building-1 point. Total points-17 for Level of Care B.

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

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 four (4) deficits on the PAS-2000 completed on 8-15-05 in the areas of eating, bathing, dressing, and grooming. The areas of dispute involved transferring, walking, orientation, vacating the building in an emergency, and medication administration. The State Hearing Officer was convinced by the testimony of the claimant's witnesses that the claimant requires one-person assistance with transferring, walking, and inability to vacate the building in an emergency for three (3) additional deficits. No additional deficits are awarded in the areas of orientation and medication administration. However, the claimant continues to meet the medical criteria for the Title XIX Aged/Disabled Waiver Services Program as she does have seven (7) deficits.

#### **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 State Hearing Officer finds that the claimant has a total of seventeen (17) points for Level of Care B which is 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 8th Day of March, 2006.**

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**Thomas M. Smith**  
**State Hearing Officer**