



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

September 18, 2007



Dear [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 14, 2007. 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 Hearing 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 for the ADW program is based on current policy and regulations. Some of these regulations state as follows: The Aged Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged Disabled (HCB) Services Manual 503- (11/1/03).

The information which was submitted at your hearing revealed that you did not meet the medical eligibility criteria for services under 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  
Kay Ikerd, BOSS  
[REDACTED], WVMI  
[REDACTED], [REDACTED]

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

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**Claimant,**

**v.**

**Action Number: 07-BOR-1748**

**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 September 14, 2007 for █ on a timely appeal filed July 12, 2007. 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.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Aged Disabled Waiver 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 an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

### **III. PARTICIPANTS:**

██████████ Claimant.  
██████████, Case Manager, ██████████.  
██████████, Case Manager, ██████████.  
Kay Ikerd, R. N., Bureau of Senior Services (BOSS) (participating by speaker phone).  
██████████, R. N., WV Medical Institute (WVMI) (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 Department was correct in the decision to deny medical eligibility for the Title XIX Aged/Disabled Waiver Services Program.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service Manual §500

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

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

- D-1** Copy of Aged/Disabled Home and Community based Services Manual §503 - 503.4 (4 pages).
- D-2** Copy of Pre-Admission Screening, PAS, completed 6-11-07 (8 pages).
- D-3** Copy of notice of potential denial dated 6-15-07 (2 pages).
- D-4** Copy of notice of denial dated 7-2-07 (2 pages).

(It should be noted that additional documents submitted by the Department were not admitted as evidence and these documents are marked "not admitted" for identification purposes only).

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

- 1) The claimant was reevaluated for medical eligibility for the Title XIX Aged Disabled Waiver Services Program on 6-11-07 by the R.N. from WVMI via a PAS-2000.
- 2) The PAS-2000 completed by the WVMI R.N. on 6-11-07 from WVMI (Exhibit #D-2) determined that only three (3) deficits existed in the areas of dressing, grooming, and incontinence of bladder.
- 3) Notification of potential denial was issued on 6-15-07 (Exhibit #D-3) showing three (3) deficits when five (5) deficits are required.
- 4) Notice of final denial was issued on 7-2-07 (Exhibit #D-4) showing three (3) deficits.

- 5) Testimony from the WVMi R. N. indicated that she determined the claimant had only three (3) deficits in the activities of daily living and did not meet the medical criteria.
- 6) Testimony from the claimant indicated that she forgets to take her medication and needs to be reminded by her worker, that her worker helps her with curling and washing her hair and with bathing as she washes her back and puts on lotion and a prescription lotion on her lower back, that she does not remember if she told the WVMi R.N. about that, that she has had bleeding for six (6) months but does not remember if she told the WVMi R. N. about that, and that she cannot lift anything.
- 7) The R.N. from WVMi testified that the claimant did not tell her about the back medicine and that she noted about the bleeding.
- 8) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

- 9) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

- 10) Aged Disabled Home and Community-Based Services Manual Section 503.1.1 PURPOSE:

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

**11) Aged Disabled Home and Community-Based Services Manual Section 503.2  
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24 Decubitus; Stage 3 or 4

#25 In the event of an emergency, the individual is c) mentally unable to vacate or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.

#26 Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- |                            |   |
|----------------------------|---|
| a. Eating-----             | Level 2 or higher (physical assistance to get nourishment, not preparation)   |
| b. Bathing ----            | Level 2 or higher (physical assistance or more)   |
| c. Grooming---             | Level 2 or higher (physical assistance or more)   |
| d. Dressing ----           | Level 2 or higher (physical assistance or more)   |
| e. Continence--<br>bowel   | Level 3 or higher; must be incontinent  |
| f. Continence--<br>bladder | Level 3 or higher; must be incontinent  |
| g. Orientation--           | Level 3 or higher (totally disoriented, comatose)   |
| h. Transfer-----           | Level 3 or higher (one person or two person assist in the home)   |
| i. Walking-----            | Level 3 or higher (one person assist in the home)   |
| j. 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) |

#27 Individual has skilled needs in one or more of these areas B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations.

#28 The individual is not capable of administering his/her own medications.

**12) Aged Disabled Home and Community-Based Services Manual Section 503.4  
MEDICAL REEVALUATION:**

Annual reevaluations for medical necessity for each ADW member must be conducted.

**13)** The only areas of dispute with the findings of the PAS-2000 by the claimant were with bathing and medication administration. The WVMi R.N. did not award a deficit for bathing as the claimant informed her that she only needed her back washed. The claimant testified that she also needs medication (a prescription lotion) put on her lower back but that she could not remember if she told the WVMi R.N. about that. Since the claimant can perform the majority of tasks with bathing, a deficit cannot be awarded for bathing. In the area of medication administration, the claimant testified that she needs reminders to take her medicine and testified

about the medication that must be put on her lower back for her. However, the claimant could not remember if she informed the WVMi R.N. about this and the WVMi R. N. did not list any such medication on the PAS-2000 and did not have anything in her notes about it. In addition, needing reminders to take medication does not qualify as being unable to administer medications. Therefore, a deficit cannot be awarded for medication administration. The State Hearing Officer finds that the Department correctly determined that the claimant has only three (3) deficits in the activities of daily living.

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

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. The WVMi R. N. determined that the claimant had only three (3) deficits in the areas of dressing, grooming, and bladder incontinence.
- 2) There were no issues raised at the hearing by the claimant for which she could be awarded additional deficits.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer that the Department was correct in the determination that this claimant is not medically eligible for the Title XIX Aged Disabled Waiver Services Program. I am ruling to **uphold** the Agency's action to deny medical eligibility for the Title XIX Aged Disabled Waiver Services Program.

#### **IX. RIGHT OF APPEAL:**

See Attachment

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

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 18<sup>th</sup> Day of September, 2007.**

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