



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

October 29, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 25, 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

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

█
Claimant,

v.

Action Number: 07-BOR-1955

**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 October 25, 2007 for █ on a timely appeal filed August 21, 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 denied 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.
██████ Claimant's friend and caregiver.
Kay Ikerd, R. N., Bureau of Senior Services (BOSS).
██████, R. N., WV Medical Institute (WVMI).

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 5-5-07 (9 pages).
- D-3 Copy of notice of potential denial dated 5-17-07 (2 pages).
- D-4 Copy of notice of denial dated 6-4-07 (2 pages).

- CI-1 Copy of letter from ██████████, M. D. 5-31-07 (3 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 evaluated for initial medical eligibility for the Title XIX Aged Disabled Waiver Services Program on 5-7-07 by the R.N. from WVMI via a PAS-2000.
- 2) The PAS-2000 completed by the WVMI R.N. on 5-7-07 from WVMI (Exhibit #D-2) determined that only three (3) deficits existed in the areas of bathing, grooming, and being physically unable to vacate the building.
- 3) Notification of potential denial was issued on 5-17-07 (Exhibit #D-3) showing three (3) deficits when five (5) deficits are required.

- 4) Notice of final denial was issued on 6-4-07 (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's witness indicated that the claimant is on oxygen now and has trouble transferring and walking, that she was not on oxygen in May, 2007, that she cannot use a wheelchair because of shortness of breath, that she needs help getting into the bed and needed it in May of this year, that she needs more help in the shower now, that she needed help with dressing when the WVMi R. N. interviewed her but she did not tell her, that she has been falling a lot and someone needs to stand behind her (it should be noted that the State Hearing Officer advised the claimant's witness that the issue of the hearing involved the claimant's condition as of the date the PAS-2000 was completed (5-7-07).
- 7) Testimony from the R.N. from WVMi indicated that her notes from the PAS-2000 showed that the claimant told her she could dress herself and needed no assistance and she witnessed the claimant transferring using her arms to push up.
- 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).

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|----------------------------|---|
| 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--
bowel | Level 3 or higher; must be incontinent |
| f. Continence--
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 areas of dispute with the findings of the PAS-2000 by the claimant appeared to be with walking, transferring, and dressing. The claimant's witness testified that the claimant falls a lot and needed assistance with walking and transferring as she is now on oxygen but was not on oxygen in May, 2007. The claimant's witness also testified that the claimant needed

assistance with dressing when the WVMi R. N. interviewed her but the claimant did not tell the R. N. The State Hearing Officer finds that the testimony and evidence show that the findings by the WVMi R. N. on 5-7-07 were correct. The notes of the WVMi R. N. from the PAS-2000 dated 5-7-07 showed that she witnessed the claimant transferring by using her arms and also witnessed her walking by holding onto the walls. The WVMi R.N.'s notes also indicated that the claimant informed her that she has no trouble getting dressed. The State Hearing Officer considered the letter from Dr. [REDACTED] dated 5-31-07 (Exhibit #C1-1). However, the letter was apparently not received by the Department until it was sent to them by the State Hearing Officer on 9-24-07. In addition, the only items addressed for which an additional deficit could be awarded were walking and transferring and the letter only states that the claimant needs assistance in those areas but does not state what kind of assistance. The State Hearing Officer also understands that the claimant's condition may have worsened but the finding of the PAS-2000 on 5-7-07 appear to be accurate and the claimant had only three (3) deficits in the activities of daily living as of 5-7-07.

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 bathing, grooming, and inability to physically vacate the building.
- 2) The issues raised at the hearing by the claimant for which she could be awarded additional deficits were for walking, transferring, and dressing. However, the claimant was correctly determined to be Level II in walking and transferring which equated to requiring supervision/assistive device. In regard to dressing, the claimant informed the WVMi R.N. on 5-7-07 that she needed no assistance with dressing. Additional deficits could not be awarded to the claimant and five (5) deficits are required in order to be eligible for the Title XIX Aged/Disabled Waiver Services Program.

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 29th Day of October, 2007.

**Thomas M. Smith
State Hearing Officer**