



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

February 28, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 27, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny medical eligibility and terminate benefits under 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 503 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 and terminate benefits under 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], [REDACTED]

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

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**Claimant,**

**v.**

**Action Number: 06-BOR-3389**

**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 February 27, 2007 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 February 27, 2007 on a timely appeal filed December 6, 2006. It should be noted that the hearing was originally scheduled for February 13, 2007 but was rescheduled at Department's request.

It should be noted here that the claimant's benefits were 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 caregiver.

3. [REDACTED], Casemanager, [REDACTED].
4. Kay Ikerd, R.N., Bureau for Senior Services (BOSS) (participating by speaker phone).
5. [REDACTED], R.N., West Virginia 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 to propose termination of benefits under the Title XIX Aged/Disabled Waiver Services Program due to a determination that the claimant did not meet medical criteria for requiring nursing care.

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

Chapter 500 Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03, Section 503, 503.1, 503.2.

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

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

- #1 Copy of regulations (4 pages).
- #2 Copy of PAS-2000 completed 10-30-06 (9 pages).
- #3 Copy of potential denial letter dated 11-7-06 (2 pages).
- #4 Copy of denial letter dated 11-27-06 (2 pages).
- #5 Copy of hearing request.

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

None.

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

- 1) The claimant was an active recipient of benefits under the Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a PAS-2000 was completed by the R.N. from of WVMI on 10-30-06 and was denied for medical eligibility (Exhibit #2).
- 2) The R.N. from WVMI purported that she completed the PAS-2000 on 10-30-06 (Exhibit #2) and determined that only two (2) deficits existed in the functional activities of eating and bladder incontinence, that the claimant could vacate the building in an emergency with supervision, that she witnessed the claimant transfer and ambulate two (2) times with a quad cane, that the claimant reported she was self-prompting with bathing, dressing, and grooming, that the claimant reported no decubitus or disorientation, and that the claimant reported she could self-administer medications.

The R.N. from WVMi reported that neither the claimant, homemaker, or casemanager from [REDACTED] disagreed with her findings.

- 3) The R.N. from BOSS testified about the regulations (Exhibit #1).
- 4) The claimant was notified of potential denial on 11-7-06 (Exhibit #3) and of denial on 11-27-06 (Exhibit #4) and a hearing request was received by the Bureau for Medical Services on 12-6-06, by the Board of Review on 1-12-07, and by the State Hearing Officer on 1-18-07.
- 5) Testimony from the claimant disagreed with the findings of the PAS-2000 in the areas of bathing, dressing, grooming, and vacating the building in an emergency. The claimant purported that if the house was on fire, she could not get out by herself. The claimant purported that when the R.N. from WVMi interviewed her, she did not feel comfortable with the homemaker who had been there for only a week and that she would not let that homemaker assist her with bathing, dressing or grooming. The claimant purported that she does not remember the R.N. from WVMi being there other than talking about one of her medications with her as she was very sick.
- 6) The casemanager from [REDACTED] purported that she was surprised by the claimant's responses to the WVMi R.N. on 10-30-06 but did not speak in disagreement with the answers the claimant gave and that the claimant has been on the program for three (3) years and her condition has not improved.
- 7) 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.

- 8) 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.

- 9) 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.

10) 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.

11) 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.

## VIII CONCLUSIONS OF LAW:

- 1) Regulations in Section 503.2 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 two (2) deficits on the PAS-2000 completed on 10-30-06 in the areas of eating and bladder incontinence.

- 3) The areas of dispute presented during the hearing involved vacating the building in an emergency, bathing, dressing, and grooming. The State Hearing Officer finds that the claimant can vacate the building in an emergency with supervision. The State Hearing Officer finds that the claimant reported to the R.N. from WVMI that she needed no assistance with bathing, dressing, and grooming and that the casemanager from [REDACTED] did not disagree with the findings of the R.N. from WVMI on 10-30-06. The State Hearing Officer finds that the findings of the PAS-2000 accurately reflected the claimant's abilities on 10-30-06
- 4) The claimant qualified for two (2) deficits and does not meet 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 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 28th Day of February, 2007.**

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