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 21, 2006

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_____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 20, 2006. Your hearing request was based on the WV Department of Health & Human Resources (WVMI) action to deny medical eligibility for nursing home care.

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 for the Long Term Care (Nursing Home) Program is based on current policy and regulations. Some of these regulations state as follows: to qualify for medical eligibility, an individual must need direct nursing care twenty-four (24) hours a day, seven (7) days a week and must have a minimum of five (5) deficits identified on the PAS (Medicaid Regulations Section 580.2).

The information which was submitted at your hearing revealed that you do not meet the medical criteria for skilled nursing care as the PAS-2005 completed April 30, 2006 indicated that you only have four (4) deficits in the major life areas.

It is the decision of the State Hearings Officer to uphold the action of the Department (WVMI) to determine that you do not require nursing home care.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Emily Keefer, Program Manager, Bureau for Medical Services
Oretta Keeney, R. N., WVMI
[redacted] Director of Nursing, [redacted] Health Care Center
Margaret Damron, Social Worker, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 06-BOR-2403**

Mingo Manor Nursing Home, Inc. & WV Department of Health & Human Resources,

Respondents,

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 September 20, 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 September 20, 2006 on a timely appeal filed July 10, 2006. It should also be noted that the hearing was convened by telephone conference at claimant's request.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

It is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

III. PARTICIPANTS:

1. [redacted] Director of Nursing, [redacted] Health Care Center.
2. [redacted] Admissions Clerk, [redacted] Health Care Center.
3. Margaret Damron, Social Worker, DHHR.
4. Emily Keefer, Program Manager, Bureau for Medical Services.

5. Oretta Keeney, R. N., WV Medical Institute.

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 deny medical eligibility for nursing home care.

V. APPLICABLE POLICY:

Medicaid Regulations Sections 508.2 & 508.3.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Respondent's Exhibits:
#1 Copy of Medicaid regulations Chapter 508.2 (3 pages).
#2 Copy of PAS-2005 completed 4-30-06 (6 pages).
#3 Copy of notification letter dated 6-30-06 (3 pages).

Claimant's Exhibits:
None.

VII. FINDINGS OF FACT:

1) The claimant was a resident of [redacted] Health Care Center when a PAS-2005 was completed and was signed by Dr. [redacted] on 4-30-06 for nursing home care (Exhibit #2).

2) The PAS-2005 was reviewed by WV Medical Institute on 6-30-06 and was denied for medical eligibility for nursing home care as the claimant had only four (4) deficits in the areas of bathing, dressing, grooming, and medication administration.

3) Notification of denial for nursing home care was issued on 6-30-06 and stated that the claimant did not have five (5) deficits in the areas of care needs as she only had three (4) deficits (Exhibit #3).

4) The claimant's hearing request was received by the Bureau for Medical Services on 7-10-06, by the Board of Review on 7-11-06, and by the State Hearing Officer on 7-19-06.

5) Ms. Keefer testified about the regulations from Medicaid Regulations Chapter 508.2 (Exhibit #1).

6) Ms. Keeney testified about the PAS-2005 dated 4-30-06 (Exhibit #2). Ms. Keeney testified that the claimant met the criteria for a deficit in the areas of bathing, dressing, grooming, and medication administration for a total of four (4) deficits but the claimant did not meet medical eligibility criteria for nursing home care as she did not have five (5) deficits.

7) Ms. [redacted] testified that the claimant is unable to walk for long distances, that she would be unable to vacate the building without one-person assistance, and that she would be unable to eat without having her tray set up and having her meal prepared.

8) Mr. [redacted] testified that he completed the PAS-2005.

9) Ms. Damron testified that the Department became involved in the case when it was determined that the claimant could no longer live in her home, that she was confused and was falling a lot, that she had homemaker services five (5) days a week but had to crawl from room to room at times, that it was determined that she needed nursing home care or supervision, and that she had no place else to go.

10) Medicaid Regulations Section 508.2 states, in part:

To qualify medically for the nursing facility Medicaid benefits, an individual must need direct nursing care twenty-four (24) hours a day, seven (7) days a week. The Bureau has designated a tool known as the Pre-Admission Screening form (PAS) to be utilized for physician certification of the medical needs of individuals applying for the Medicaid benefits. See Attachment

An individual must have a minimum of five (5) deficits identified on the PAS in order to qualify for the Medicaid nursing benefits. These deficits may be any of the following:

- Decubitus – Stage 3 or 4

- Unable to vacate a building – a person is physically unable at all times, requiring one person assistance with walking (Item 25i), or mentally incapable of leaving the building due to total disorientation, with a diagnosis of dementia, Alzheimers, or related condition (Items 25g and 33).

- The individual needs hands-on, physical assistance with eating, bathing, grooming, dressing, transferring, and walking.

- The individual is totally incontinent of bowel or bladder. Total incontinence is when the individual has no control of bowel or bladder functions at any time.

- The individual is totally disoriented to time and place or is comatose.

- The individual cannot navigate a wheel chair in the home and must not be able to walk in the home without physical assistance.

- The individual has skilled nursing care needs in one or more of these areas: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations

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

The assessment tool designated by the Bureau for Medical Services must be completed and signed and dated by a physician. It is then forwarded to the Bureau or its designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility no matter what the payment source for services.

Each nursing facility must have an original pre-admission screening tool to qualify the individual for Medicaid and to meet the federal PASRR requirements. Should the receiving nursing facility fail to obtain an approved assessment prior to admission of a Medicaid eligible individual, the Medicaid program cannot pay for services. The individual cannot be charged for the cost of care during the non-covered period.

11) The areas of dispute involved the major life areas of walking, vacating the building, and eating.

12) In the area of walking, Mr. [redacted] testified that he completed the PAS-2005 and marked that the claimant required Level II with walking (supervised/assistive device). The regulations clearly require that a Level III (one person assistance) be indicated on the PAS-2005 (one-person assistance) in order for a deficit to be awarded for walking. Therefore, a deficit cannot be awarded in the area of walking.

13) In the area of vacating the building, the testimony and evidence showed that the claimant was marked as Level II in the areas of walking and orientation. The regulations clearly require that a finding of Level III be made in either the area of walking or orientation before a deficit can be awarded. Therefore, a deficit cannot be awarded in the area of vacating the building.

14) In the area of eating, Ms. [redacted] testified that the claimant required meal preparation for eating. The regulations clearly state that meal preparation does not qualify an individual for a deficit in the area of eating. Therefore, a deficit cannot be awarded in the area of eating.

VIII. CONCLUSIONS OF LAW:

1) Medicaid Regulations from Chapter 508.2 require that five (5) deficits be determined on the PAS-2005 in order to qualify for medical eligibility for nursing home care.

2) The claimant has a total of four (4) deficits on the PAS-2005 dated 4-30-06 and does not meet the medical criteria for nursing home care.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to deny medical eligibility for nursing home care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of September, 2006.

_____

Thomas M. Smith
State Hearing Officer