State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 19, 2006

_____
c/o _____
_____
_____

Dear Ms _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 29, 2006. Your hearing request was based on the Department of Health and Human Resources' decision to deny medical eligibility for Nursing Facility coverage.

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 Medicaid, Long Term Care Services is based on current policy and regulations. Some of these regulations state as follows: Medicaid, Long Term Care Services are provided to eligible Medicaid individuals who reside in a nursing care or ICF/MR facility. Individuals eligible for coverage under this group must qualify medically. The medical assessment must establish the existence of a specified number and level of care needs. A determination must also be made as to whether the individual requires active treatment. These criteria only address the appropriateness of placement, and not the provision of services. (West Virginia Income Maintenance Manual § 17.1 and 17.11 & 42 CFR) .

The information, which was submitted at your hearing, revealed that the claimant's physical and mental condition does not require a sufficient number of services and the degree of care required to qualify for Nursing Facility level of care.

It is the decision of the State Hearings Officer to **uphold** the actions of the Department to deny medical eligibility for the Medicaid, Long Term Care Program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Emily Keefer, B.M.S.
Alva Page, Assistant Attorney General
[redacted] Esq.[redacted]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 05-BOR-7172**

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 29, 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 29, 2006 on a timely appeal, filed December 22, 2005.

II. PROGRAM PURPOSE:

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

Nursing Home Care 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 standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

III. PARTICIPANTS:

Claimants' Witnesses:
_____, claimant
_____, claimant's daughter & Health Care Surrogate
_____, claimant's daughter
[redacted] Social Worker, [redacted] Hospital

[redacted] Assistant Director Nursing, [redacted] Hospital

Department's Witnesses:
Emily Keefer, Bureau of Medical Services, by speakerphone
Stacie Holstine, Bureau of Medical Services, by speakerphone
Debbie Lilly, Psychologist, by speakerphone

Legal Council for Claimant: [redacted] Esq. Legal Aid of WV
Legal Council for Department: Alva Page III, Assistant Attorney General

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in determining ineligibility for the Medicaid, Long Term Care (Nursing Home) Program.

V. APPLICABLE POLICY:

West Virginia Long Term Care policy §508.2
Federal Code of Regulations §42-CFR-483.130
West Virginia Income Maintenance Manual Chapter 17.11:
Americans Disability Act (ADA), 1990

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:
D-1 West Virginia Long Term Care policy §508.2
D-2 Pre-Admission Screening (PAS) completed November 26, 2005
D-3 Minimum Data Set (MDS) signed November 16, 2005
D-4 Notification of denial dated December 29, 2005
D-5 Nurse's Notes November 13th, and 14th, 2005
D-6 Social Work Progress Notes dated November 22nd, and 23rd, 2005
D-7 Level II Psychological assessment reports February 16, 2006

Claimant's Exhibits:
C-1 Nurse's Notes December 14th, thru 20th, 2005
C-2 Social Work Progress Notes October 18th and 19th, 2005
C-3 Social Work Progress Notes August 4th thru 10th, 2005
C-4 Social Work Progress Notes August 23rd and 24th, 2005
C-5 Resident Daily Care Record November 2005
C-6 Letter from Dr. [redacted] MD dated March 29, 2006

VII. FINDINGS OF FACT:

1) Ms. _____ is a 63-year-old female who is currently residing at [redacted] Hospital, Long Term Care Facility, of [redacted] County.

2) Ms. _____'s family was attempting to have her transferred to a Long Term Care facility in WV located closer to family. The required Pre-Admission Screening, (PAS), was completed by the [redacted] facility and submitted to the Department for eligibility determination. [redacted] staff had considered locating a Personal Care Home for placement. Staff contacted [redacted] Center [redacted] to pursue assistance in placement in a less restrictive environment. Ms. _____'s daughter agreed with pursuing a less restrictive independent living arrangement but, her agreement was with reservation. The daughters checked in to the possibility of an Assisted Living facility or a Personal Care Home for placement. The Assisted Living situation was not financially feasible and Ms. _____ objected to the Personal Care resolution, as she wants to live in her own apartment. Witnesses are concerned about Ms. _____'s hoarding of food. If she were in her own apartment, there would be nobody available to remove old food.

3) The Department reviewed this initial PAS, which assigned only two (2) qualifying deficits. The Department issued a denial notice on November 28, 2005. This denial prompted the Hopemont facility to complete and submit another PAS to the Department on November 29, 2005. This PAS assigned four (4) qualifying deficits, which again lead to a denial of eligibility for Long Term Care services.

4) The Department issued a second denial notice on December 29, 1005.

5) The three (3) qualifying deficits on the later PAS were in the areas of bathing, grooming, and dressing all of which were scored with a level II that indicates the need for (physical assistance). The fourth qualifying deficit was for the claimants inability to administer her own medication

6) The issue raised by the claimant's witnesses was in the area of orientation. Orientation was scored on the PAS as a level 2, which is (Intermittent Disorientation).

7) The claimant has a diagnosis of Bi-Polar. She has episodes of confusion throughout the day. During these episodes, Ms. _____ asks repetitive questions, makes repetitive statements and appears to not hear responses from caregivers. Ms. _____ believes these periods of confusion are a result of her becoming upset about something. The episodes are indicated by [redacted] to last for a period of about an hour. During these episodes, the claimant can perform her own activities of daily living but requires more prompting. Staff at [redacted] adjusts the schedule around these episodes.

8) Psychologist, [redacted] completed an evaluation with Ms. _____ to satisfy the level II requirement for LTC medical eligibility. During this February 16, 2006 evaluation, Ms. [redacted] did observe attention and concentration impairment in the beginning of the interview. Ms. _____ was concerned about getting her recent purchases put away and this hampered her ability to focus on questions asked by Ms.

[redacted] The roommate coming in and out of the room also adversely affected her ability to concentrate on answering Ms. Lilly's questions. Ms. _____ suggested that the interview be completed in the interview room. She led Ms[redacted] to the interview room where her mental status improved. She exhibited no further disturbances in her thought process. Ms.[redacted]s Summary and Recommendations in Exhibit (D-7) state in part:

> "The resident's record indicates that she is independent for eating, dressing, bathing, and grooming. She requires supervision only for bathing. There is no support for Mrs. _____ requiring hands on care for her activities of daily living. A less restrictive level of care is recommended for Ms. _____".

9) The claimant's witnesses raised issues in the areas of vacating in the event of an emergency if the claimant were experiencing an episode of confusion. It is there belief that this should be assigned as her fifth qualifying deficit.

10) WV Long Term Care Policy §508.2, Medical Eligibility:

> To qualify medically for the nursing facility Medicaid benefit, 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 benefit.
>
> An individual must have a minimum of five (5) deficits identified on the PAS in order to qualify for the Medicaid facility benefit. 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 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 administrating his/her own medications.

The assessment tool designated by the Bureau for Medical Services must be completed, 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.

A new medical assessment must be done for Medicaid eligibility for the nursing facility resident for all of the following situations:
- Application for the Medicaid nursing facility benefit;
- Transfer from on nursing facility to another:
- Previous resident returning from any setting other than an acute care hospital;
- Resident transferred to an acute care hospital, then to a distinct skilled nursing unit, and then returns to the original nursing facility; and
- Resident converts from private pay to Medicaid.

11) West Virginia Income Maintenance Manual Chapter 17.11:
B. ESTABLISHING MEDICAL NECESSITY, THE PAS-2000

When the PAS-2000 is completed before payment for nursing facility services can be made, medical necessity must be established. The PAS-2000 is used for this purpose. The PAS-2000 is signed by a physician and is evaluated by a medical professional of the State's contracted level of care evaluator. The PAS-2000 is valid for 60 days from the date the physician signs the form. The 60-day validity period applies, regardless of the reason for completion, i.e., new admission, transfer to a different facility.

12) Federal Code of Regulations - 42 CFR 483.130 states that any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must not be admitted.

13) Americans Disability Act, (ADA) 1990, Title II:

"States are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected

individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

VIII. CONCLUSIONS OF LAW:

1) Policy §508.2 stipulates that five (5) deficits are required for a determination of medical eligibility for Medicaid Facility benefits. The later completed PAS assigned four (4) deficits in the areas of bathing, dressing, grooming and medicating. Documentation and testimony did not clearly conclude that this claimant is incapable of independently completing her activities of daily living with the exception of medicating. Witnesses for the claimant take the position that an additional deficit should have been assigned for needing physical assistance to vacate in the event of an emergency.

2) Policy §508.2 states that a deficit is assigned for vacating if: "In the event of an emergency, the individual is mentally incapable of leaving the building due to total disorientation, with a diagnosis of dementia, Alzheimer's or related condition." Although it has been proven that the claimant has intermittent disorientation, it was not proven that these episodes could be considered total disorientation.

3) Ms. _____ clearly is not an individual who needs direct nursing care twenty-four (24) hours a day, seven (7) days a week, which is set forth by policy as a necessary requirement for qualifying medically for nursing facility Medicaid benefits. Federal regulations dictate that an individual who is MI or MR, but does not require the level of services offered in a nursing facility must not be admitted to such facilities. The ADA concurs with this regulation. The State's treatment professionals at [redacted] Hospital, in their pursuit of personal care home placement, demonstrated their belief that Ms. _____ would be more appropriately placed in a less restrictive setting.

IX. DECISION:

After reviewing the testimony presented during the hearing and the examination of documents and policy presented, it is the finding of this Hearing Officer that the Department followed policy in making the determination that Ms. _____'s placement should be in a less restrictive setting and to discontinue eligibility for the Medicaid Long Term Care Program. I am ruling to **uphold** the Department's action to deny the claimant's application.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of May, 2006.

_____

Sharon K. Yoho
State Hearing Officer