



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General

Board of Review

PO Box 29

Grafton WV 26354

September 6, 2007

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 18, 2007. Your hearing request was based on the Department of Health and Human Resources/ West Virginia Medical Institute's determination in finding you medically ineligible for the Medicaid, Long Term Care Program (nursing facility services).

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.

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 evaluation assessment must establish the existence of a specified number and degree of functional care needs. (West Virginia Income Maintenance Manual § 17.1 and 17.11)

The information which was submitted at your hearing revealed that your medical condition as of the May 8, 2007 medical evaluation did require a sufficient level of care (5 functional deficits) to medically qualify you for participation in the Medicaid, Long Term Care Program. The information provided to the agencies (DHHR and WVMI) for use in determining medical eligibility on the evaluation was not reflective of your functional limitations.

It is the decision of the State Hearing Officer to **reverse** the determination of the agency as set forth in the May 9, 2007 notification. Your medical eligibility for the Medicaid-Long Term Care Program continues. See part IX of the attached summary.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Bureau for Medical Services, Nora McQuain
[REDACTED] Co DHHR
[REDACTED] Administrator, Heartland [REDACTED]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

vs.

Action Number 07- BOR- 1447

West Virginia Department of Health & Human Resources,
Respondent.

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 6, 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 originally convened on June 22, 2007 and reconvened July 18, 2007 on a timely appeal filed May 22, 2007. Benefits have continued pending a hearing decision

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:

_____, claimant

_____, son to claimant (by phone 6/22/07)

_____, Daughter in law to claimant (by phone 6/22/07)

_____, daughter to claimant & POA

██████████ RN, Heartland

Nora McQuain, RN- Bureau of Medical Services/ Program Manager- LTC (by phone)

Oretta Keeney, RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the claimant continues to be medically eligible for the Medicaid, Long Term Care Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 17.1 and 17.11.

Medicaid Manual Chapter 500, § 508.2- 508.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1- Medicaid Policy 508.1- 508.5

D-2- PAS-2000, Medical Evaluation, 5/8/07

D-3- Notification (of denial), 5/9/07

C-1- Statement from _____, 6/15/07

C-2- NH Progress Notes, 5/16/07

VII. FINDINGS OF FACT:

1) A PAS-2000, medical evaluation dated May 8, 2007 (D-2) was evaluated by Dept of Health & Human Resources per West Virginia Medical Institute May 9, 2007. WVMI determined the claimant medically ineligible for the Medicaid, Long Term Care Program and claimant was notified in a notification dated May 9, 2007 (D-3).

2) The claimant's hearing request dated May 17, 2007 was received by the Bureau for Medical Services May 22, 2007. This hearing was convened June 22, 2007 then reconvened July 18, 2007 to permit testimony from the claimant's daughter who is POA and from NH personnel.

3) During to the hearing, exhibits as noted in Section VI were presented.

4) Testimony was heard from the individuals listed in section III above. All persons providing testimony were placed under oath.

5) The agency presented testimony that 5 deficits are necessary to establish medical eligibility for NH services as assessed on the PAS evaluation. Fully qualifying deficits were acknowledged in Bathing, Grooming and Medication Administration. In summary only these 3 qualifying deficits were found.

6) The medical evaluation completed May 8, 2007 (Exhibit D-2) reveals as follows: Bathing and Grooming - both level 2 (physical assistance). Medication administration was checked as "No" - (not able to self medicate). Vacating a building was checked as "with supervision". Walking, Wheeling and Orientation were marked as level 2, supervised/assistive device and intermittently disoriented respectively. Nursing home care was recommended with ability to return home or be discharged marked - no.

7) Testimony by and on behalf of the claimant reveals: She is 91 years of age. She doesn't ask staff to help her dress but receives help from her roommate. Roommate must help her get clothing on and off. Sometimes she is not able to handle buttons and zippers. She wears continence pads 24/7. Incontinence occurs less than 3 times per week. Her ambulation is slow and she is on occasion disoriented. She is not sure she could get out of the building in an emergency one reason being that she is too weak to push the door open. Some of her food must be cut up for her.

8) Medicaid Manual Chapter 500, Volume 15 § 508.4

Recertification of the continuing need for NF care must be documented in the resident's medical record by the physician at 60 days, 180 days, then annually after the initial certification. The facility is responsible for obtaining recertification documentation from the physician for each NF resident for whom payment is requested under the Medicaid program. (Every thirty days for the first 90 days after admission and at least once every 60 days thereafter.)

9) Medicaid Manual Chapter 500, Volume 15 § 508.2 states in part: 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 nursing facility benefit. These deficits may be any of the following:

- Stage 3 or 4 pressure ulcer
- In the event of an emergency, the individual is mentally or physically unable to vacate a building
- The individual needs hands on assistance with eating, bathing, grooming, dressing, transfer, and walking.

- The individual is incontinent of bowel or bladder more than three (3) times a week.
- 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, tracheotomy, ventilator, parenteral fluids, sterile dressings or irrigations.
- The individual is not capable either mentally or physically 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.

VIII. CONCLUSIONS OF LAW:

1) Evidence reveals that a PAS- Medical evaluation was completed May 8, 2007 and evaluated by WVMi May 9 at which time the agency found 3 qualifying deficits – *walking, grooming* and *medication administration*.

2) Evidence suggests that the claimant requires more than “supervision” to safely vacate in an emergency. Documentation and testimony indicate that the claimant requires supervision and an assistive device in walking and wheeling and is slow in ambulation. Her orientation is characterized as “intermittently disoriented. On the basis of these factors and the operative situation “an emergency” her ability to successfully vacate independently or merely with “supervision” is highly doubtful. It seems clear that her needs in this category exceed those noted on the evaluation. Therefore granting of a qualifying deficit in *Vacating in an Emergency* is appropriate.

3) Testimony reveals that while the claimant may not receive help from facility staff in dressing, her roommate must help her dress. This situation constitutes physical assistance and therefore identifies *dressing* as a qualifying deficit.

5) To medically qualify for the nursing home Medicaid benefit, an individual must have a minimum of five (5) qualifying deficits. The medical evaluation of May 8, 2007 established qualifying deficits in *bathing, grooming* and *medication administration*. Evidence presented during the hearing established additional qualifying deficits in *dressing* and *vacating a building*... A total of 5 qualifying deficits is found based on evidence submitted.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **reverse** the May 9, 2007 determination concerning the claimant's medical eligibility for Medicaid LTC Services. Evidence, establishes 5 fully qualifying deficits.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 6th day of September 2007.

RON ANGLIN
State Hearing Examiner

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION
For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.