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

September 11, 2007

_____
_____
_____

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 5, 2007. Your hearing request was based on the Department of Health and Human Resources' proposed termination of Medical eligibility for Medicaid coverage for Nursing Facility 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 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 your 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 terminate medicaid coverage 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
Nora McQuain, B.M.S.
Oretta Keeney, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 07-BOR-1736**

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 September 5, 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 September 5, 2007 on a timely appeal, filed July 11, 2007.

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 friend
[redacted] Social Worker

_____, Claimant's cousin
[redacted] Social Worker, [redacted]
_____, Claimant's sister
_____, Claimant's brother

Department's Witnesses:
Nora McQuain, Bureau of Medical Services, by speakerphone
Oretta Keeney, WV Medical Institute, by speakerphone

Council for Claimant was [redacted] Legal Aid
Council for the Department was Nisar Kalwar

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 medical ineligibility for the Medicaid, Long Term Care (Nursing Home) Program.

V. APPLICABLE POLICY:

West Virginia Long Term Care policy §508.2
West Virginia Income Maintenance Manual Chapter 17.11:

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 June 27, 2007
D-3 Eligibility Determination dated June 29, 2007
D-4 Notice of discontinuance dated June 29, 2007
D-5 Physician Determination of Capacity

VII. FINDINGS OF FACT:

1) The claimant is a 65-year-old male who has resided in a Long Term Care Nursing facility since 1998. He recently returned to [redacted] Nursing facility from an Acute Care Hospital into a skilled nursing unit. Once his skilled needs were met, he returned to regular nursing care at the facility.

2) A new Pre-Admission Screening (PAS) was completed by the nursing facility staff on June 27, 2007 and submitted to the WV Medical Institute (WVMI) for evaluation. This PAS was evaluated by WVMI who determined that no deficits could be assigned to this claimant.

3) The Department issued a notice of proposed discontinuation of Medicaid coverage for Long Term care on June 29, 2007.

4) During testimony, the Department conceded that a deficit for bathing should have been awarded due to the claimant's need for hands on assistance to enter his bath.

5) The claimant's witnesses raised issues regarding the areas of vacating and medicating.

6) The claimant ambulates with a walker at all times. He has limited use of one of his hands. Concerns were raised regarding his ability to open doors while holding on to his walker in the event of an emergency if the doors were not opened for him. Concerns were also raised regarding anxiety issues that might interfere with his ability to vacate in an emergency situation.

7) The PAS indicated that the claimant was independent in his medicating. Witnesses insist that he needs reminders to take his medication. The claimant testified that he could put his own medication in his mouth and that he did not need others to do that for him.

8) Much concern was raised during the hearing of the psychosocial ramifications of a transfer from facility care where he has been for the past 9 years. He has become institutionalized and dependent on others. There would be a need for extensive support services for him to adjust to independent living. Testimony indicates that family members are not in a position to care for him.

9) 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:
>
> #24- Decubitus – Stage 3 or 4
>
> #25- In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building a) and b) are not considered deficits.
>
> #26- Functional abilities of individual in the home.
> Eating – Level 2 or higher (physical assistance to get nourishment, not preparation)
> Bathing – Level 2 or higher (physical assistance or more)
> Grooming – Level 2 or higher (physical assistance or more)
> Dressing – Level 2 or higher (physical assistance or more)
> Continence – Level 3 or higher (must be incontinent)

Orientation – Level 3 or higher (totally disoriented, comatose)
Transfer – Level 3 or higher (one person or two person assist in the home)
Walking – Level 3 or higher (one person assist in the home)
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 - The individual has skilled nursing care needs in one or more of these areas: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings or irrigations.

#28- 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.

8) 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.

VIII. CONCLUSIONS OF LAW:

1) Policy §508.2 states: 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 of Medical Services for the Department of Health and Human Resources has a tool known as the PAS used to determine if there is a need for twenty-four (24) hours a day, seven (7) days a week.

2) Policy §508.2 stipulates that five (5) deficits are required to be found using this PAS tool for a determination of medical eligibility for Medicaid Facility benefits. The PAS assessed no deficits. It was determined during the hearing that he should have received one deficit for bathing. Evidence and testimony did not support a need for hands on assistance in vacating a building in the event of an emergency or in medicating. It was proven that this claimant is not independent in these two areas as was indicated on the PAS. He does need prompting and supervision for medicating and supervision for vacating however this would not constitute a deficit in either of these areas.

3) Policy §508.2 provides that a new PAS is to be completed when a resident is transferred to an acute care hospital, then to a distinct skilled nursing unit, and then returns to the original nursing facility. This claimant clearly returned from an acute care hospital into a skilled nursing unit and then to his original nursing facility for care. The nursing staff followed policy in the completion of the new PAS.

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 and the Nursing facility staff followed policy in completing the PAS and making the determination that the claimant no longer qualifies medically for Long Term Care Medicaid services. I am ruling to **uphold** the Department's action to discontinue Medicaid coverage for Long Term Care benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of September, 2007.

_____

Sharon K. Yoho
State Hearing Officer