



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 19, 2007

_____ for _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 16, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your mother's benefits under the Medicaid Long-Term Care Program due to medical ineligibility.

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 Medicaid Manual Section 508.2)

Information submitted at the hearing revealed that your mother's condition as of the July 31, 2007 medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify her for participation in the Medicaid Long-Term Care Program.

It is the decision of the State Hearing Officer to **uphold** the Agency's determination that your mother is medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Pamela L. Hinzman
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Nora McQuain, RN, Bureau for Medical Services
[REDACTED] Social Worker, [REDACTED] Manor

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,

Claimant,

vs.

Action Number 07- BOR- 2047

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 October 19, 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 October 16, 2007 on a timely appeal filed August 21, 2007. It should be noted that the Claimant’s benefits under the Medicaid Long-Term Care Program 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:

_____, daughter of Claimant
_____, Social Worker, _____ Manor
_____, RN, _____ Manor

Participating telephonically

Nora McQuain, RN, Director of Facilities-Based and Residential Care, Bureau for Medical Services
Oretta Keeney, Project Manager, Pre-Admission Review, West Virginia Medical Institute

Presiding at the hearing was Pamela Hinzman, State Hearing Officer and a member of the State Board of

Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Claimant is medically eligible for the Medicaid Long-Term Care Program.

V. APPLICABLE POLICY:

West Virginia Medicaid Manual Section 508.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits

- D-1 West Virginia Medicaid Manual Section 508
- D-2 Pre-Admission Screening form completed on July 31, 2007
- D-3 Medicaid Long-Term Care Program denial letter dated August 6, 2007
- D-4 Nurse's Notes and Care Plan

VII. FINDINGS OF FACT:

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on July 31, 2007 to determine her continued medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at [REDACTED] Manor, is medically ineligible for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute representative testified that three (3) qualifying functional deficits were identified for the Claimant in the areas of mental inability to vacate the building in the event of an emergency, physical assistance with bathing, and inability to self-administer medications.
- 3) The Claimant was notified of the denial of Long-Term Care services on August 6, 2007 (D-3).
- 4) The Claimant's daughter testified that her mother, age 92, should receive nursing home services because she does not engage in healthy habits when she is discharged from the facility. The daughter stated that the Claimant smokes and drinks coffee when she is outside of the nursing home, cannot prepare her own meals, and cannot stay alone. In addition, the Claimant does not walk as much when she is outside of the nursing home. The [REDACTED] Manor Social Worker reported that the Claimant's health improves when she is at the nursing home, but declines when she returns to her residence. The Claimant is not permitted to smoke and is more socially active when she resides at the nursing home.

None of the Claimant's witnesses, however, disagreed with the PAS findings.

- 5) West Virginia Medicaid Manual Section 508.2 (D-1) 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:

#24 Decubitis- 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 persons 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 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.

VIII. CONCLUSIONS OF LAW:

- 1) To qualify medically for the Medicaid Long-Term Care Program, policy specifies that an individual must require direct nursing care twenty-four (24) hours a day, seven (7) days a week. A tool known as the Pre-Admission Screening (PAS) form is utilized for physician certification of the medical needs of individuals applying for the Medicaid benefit. The PAS is completed and forwarded to the Bureau for Medical Services or its designee (West Virginia Medical Institute) for medical necessity review. Evidence reveals that a PAS was completed on July 31, 2007 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care Services.

- 2) Policy holds that to medically qualify for Medicaid Long-Term Care, an individual must have a minimum of five (5) qualifying deficits on the PAS. These deficits are derived from a combination of assessment elements on the medical evaluation. The Claimant's PAS revealed that she has three (3) qualifying deficits in the areas of functional limitation.
- 3) The Claimant's representatives voiced concern about the Claimant's ability to live independently. However, none of this information prompts the awarding of additional functional deficits and the Claimant's witnesses did not contest the PAS findings. Therefore, the Claimant continues to lack the five (5) functional deficits required for medical eligibility.
- 4) The Department's decision to terminate the Claimant's Medicaid Long-Term Care benefits due to medical ineligibility is correct.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Agency's decision to deny medical eligibility for the Medicaid Long-Term Care Program.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 19th day of October, 2007.

Pamela L. Hinzman
State Hearing

THE CLAIMANT'S RECOURSE TO HEARING DECISION

A. CIRCUIT COURT

An adverse decision of a State Hearing Officer is subject to judicial review through a Writ of Certiorari (West Virginia Code 53-3-1 et seq.) filed in the Circuit Court of Kanawha County within four (4) months from the date of the hearing decision.

The court may determine anew 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 may be appealed to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATES 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 STATES DEPARTMENT OF AGRICULTURE

If the hearing decision involves food stamps and 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.