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

January 26, 2007

_____
_____
_____

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 4, 2007. 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 your physical and mental condition does 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 **reverse** 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.
_____, P.O.A.

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 06-BOR-3241**

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 January 4, 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 January 4, 2007 on a timely appeal, filed October 31, 2006.

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's son and P.O.A.
_____ claimant's daughter
_____ claimant's daughter and Medical P.O.A.

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

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
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 October 4, 2006
D-3 Eligibility Determination dated October 9, 2006
D-4 Notification of denial due to not meeting required 5 deficits

VII. FINDINGS OF FACT:

1) The claimant is an 88-year-old female who is currently residing in her own home with her adult son. Her family made an application for Long Term Care placement coverage under the Medicaid program.

2) EA Hawse Nursing and Rehabilitation completed a Pre-Admission Screening (PAS) assessment on October 4, 2006.

3) The Department reviewed this initial PAS, which assigned only four (4) qualifying deficits. These deficits were in the areas of bathing, eating, vacating and medicating. The PAS was signed and dated by a Physician on October 9, 2006. The Department issued a denial notice on October 9, 2006. This denial prompted the claimant's son, who is the client's P.O.A., to request a fair hearing.

4) The claimant has primary diagnosis of osteoarthritis, hypertension and macular degeneration. She also has a diagnosis of paranoid disorder.

5) The claimant has problems at times with her orientation, but is not totally disoriented. She is able to transfer independently with some difficulty. She uses a walker to ambulate without the help of others.

6) The issues raised by the claimant's witnesses were mostly in the areas of dressing and grooming. She is able to dress herself but has some difficulty with shoes. She mostly wears shoes that have Velcro fasteners.

7) The claimant's witnesses raised the issue of her ability to do her own grooming. She is not able to clip her own nails. Her daughter clips her nails for her. She is reported to be afraid of bathing in the bathtub or the shower. She tells her family that she bathes while standing at the sink. Her daughter washes her hair for her when she visits at her daughter's home. She does this by sitting her mother on a tall stool in front of the sink. The claimant tells her family that she washes her own hair, but none of the family members, testifying at this hearing, have ever witnessed her doing this. They all believe that their mother's hair is not washed and they believe that this is because she is not able to complete this task on her own.

8) 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.
>
> #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.

9) 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 stipulates that five (5) deficits are required for a determination of medical eligibility for Medicaid Long Term Care Facility benefits. Documentation and testimony did clearly conclude that this claimant should have been assessed one additional deficit.

2) Policy §508.2 states that a deficit is assigned if the individual needs physical assistance or more for grooming. This individual is not able to clip her own nails and it is reasonable to believe that she is also not able to wash her own hair.

3) The addition of a deficit for grooming would make the claimant have a total of five (5) qualifying deficits, which would determine medical eligibility for Long Term Care services.

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 claimant does qualify medically for Long Term Care coverage under the Medicaid program. I am ruling to **reverse** the Department's action to deny the claimant's application 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 26nd Day of January, 2007.

_____

Sharon K. Yoho
State Hearing Officer