State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 6, 20[redacted]

_____
_____
_____
_____

Dear Mr._____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 2007. Your hearing request was based on the Department of Health and Human Resources' decision to deny your medical eligibility for the Medicaid Long-Term Care Program.

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 Section 17.11)

Information submitted at the hearing revealed that your medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify you for participation in the Medicaid Long-Term Care Program.

It is the decision of the State Hearing Officer to **uphold** the Department=s determination that you are medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Nora McQuain, RN, Bureau for Medical Services, DHHR
Oretta Keeney, WVMI
[redacted] Nursing & Rehabilitation Center
_____, MPOA

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,

Claimant,

vs. **Action Number 06- BOR- 3297**

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 February 8, 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 February 8, 2007 on a timely appeal filed November 2, 2006. It should be noted that this hearing was originally scheduled for January 9, 2007. It was rescheduled to February 8, 2007 because the Claimant wanted a face to face hearing.

It should be noted here that the Claimant has been found medically ineligible for the Medicaid Long-Term Care Program.

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
_____ "_____"_____, Claimant's Brother
_____, Claimant's Sister-in-Law
_____, Claimant's Sister and MPOA
[redacted] Social Worker, [redacted] Nursing & Rehabilitation Center
[redacted] Administrator, [redacted] Nursing & Rehabilitation Center
Nora McQuain, Program Manager, Long-Term Care Program, BMS, DHHR (participating telephonically)

Stacy Holstine, RN, West Virginia Medical Institute (participating telephonically)

Presiding at the hearing was Margaret M. Mann, 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 Income Maintenance Manual Section 17.11
West Virginia Medicaid Manual Section 508.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:
D-1 West Virginia Medicaid Manual Section 508.2
D-2 PAS form completed October 23, 2006
D-3 Medicaid Long-Term Care Program denial letter dated October 23, 2006

Claimant's Exhibit:
C-1 PAS form completed October 23, 2006 along with nurse's notes

VII. FINDINGS OF FACT:

1) A PAS medical evaluation (D-2) was completed for the Claimant, who has been diagnosed in part with alcohol dependency, depression, emphysema, osteoarthritis, osteoporosis, anemia, malign. prostrate, and high blood pressure, October 23, 2006 to determine medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at [redacted] Nursing and Rehabilitation Center, is medically ineligible for the Medicaid Long-Term Care Program.

2) The West Virginia Medical Institute nurse testified that there were no qualifying functional deficits found for the Claimant. The Claimant was notified of the denial of long-term care services on October 23, 2006 (D-3) It was noted that if the Claimant had been found medically eligible for Long Term Medicaid, a Level II evaluation would have been required.

3) Testimony from the Social Worker at [redacted] Nursing & Rehabilitation Center revealed that the PAS was accurate at the time it was completed. The PAS evaluation (D-2 & C-1) shows that the Claimant does not need physical assistance with eating, bathing, grooming, dressing, has external catheter for bladder, is continent of bowel, oriented, transfers independently, walks independently – sometimes uses a cane, and uses a wheelchair for convenience. He has no decubitus, can vacate in the event of an emergency independently, and it is noted that the resident chooses not to give his own medications at the facility. He has refused a bed bath. He puts on his own shirts.

4) Testimony from the Claimant's brother revealed that the Claimant cannot take his medicine – mixes it up. He has a problem looking after himself. He cannot bathe properly. The Claimant testified that he

has a tendency to fall.

5) Section 17.11B of the West Virginia Income Maintenance Manual reads in part that before payment for nursing facility services can be made, medical necessity must be established.

6) 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.
> - Individual is not capable of administrating 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 October 23, 2006 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care Services.

2) Policy holds that to medically qualify for the nursing home Medicaid benefit, 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 he has no (0) qualifying deficits.

3) Those testifying during the hearing addressed the Claimant's medical condition and voiced concerns about the Claimant's ability to live independently. However, none of the information prompted the awarding of any additional functional deficits specified in policy. Therefore, the Claimant continues to lack the five (5) functional deficits required for medical eligibility.

4) The Department's conclusion that the Claimant is medically ineligible for the Medicaid Long-Term Care Program is correct.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Department'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 6th day of March, 2007.

_____

Margaret M. Mann
State Hearing Officer

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.