State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St.
Charleston, WV 25301
304-746-2360 Ext 2227

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 5, 2008

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Dear Mr. __________:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 5, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your 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 reveals that your condition as of your February 2008 medical evaluation requires 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 **reverse** the Agency's determination that you are medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Jennifer Butcher
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Nora McQuain, RN, Bureau for Medical Services
[redacted] Administrator at [redacted] Nursing Home
__________, Medical Power of Attorney

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

__________,

Claimant,

vs. **Action Number 08- BOR- 1038**

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 August 5, 2008 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 June 5, 2008 on a timely appeal filed March 4, 2008.

It should be noted that benefits have been continued pending the outcome of the hearing.

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:

__________, goes by the name Junior, Claimant
__________, Claimant's friend/ Medical Power of Attorney
[redacted] Administrator at [redacted] Nursing Home
Nora McQuain, RN, Bureau for Medical Services
Stephanie Schiefer, RN, West Virginia Medical Institute

Presiding at the hearing was Jennifer Butcher, 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 Sections 508, 508.1 and 508.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 West Virginia Medicaid Manual Sections 508, 508.1 and 508.2
D-2 Pre-Admission Screening form completed on February 11, 2008
D-3 Denial letter dated February 22, 2008
D-4 Packet containing the following , Physician's Determination of Capacity, Minimum Data Set (MDS) information concerning Claimant's abilities, Activities of Daily Living information for January and February 2008, Care Plans, Nurses' Progress Notes
D-5 Physician's Determination of Capacity dated May 13, 2005
D-6 Nurse's notes dates January 7 through 9, 2008
D-7 Interdisciplinary Progress Notes dated December 20, 2007 through February 29, 2008.
D-8 Daily Skilled Nurses notes dated January 23, 2008
D-9 Daily Skilled Nurses notes dated January 23, 2008
D-10 Daily Skilled Nurses notes dated January 28, 2008
D-11 Daily Skilled Nurses Notes (cont'd.) dated January 28, 2008
D-12 Daily Skilled Nurses Notes dated January 30, 2008
D-13 Daily Skilled Nurses Notes (cont'd.) dated January 30, 2008
D-14 Daily Skilled Nurses Notes dated February 1, 2008
D-15 Daily Skilled Nurses Noted (cont'd.) dated February 1, 2008
D-16 Daily Skilled Nurses Notes dated February 3, 2008
D-17 Daily Skilled Nurses Notes dated February 7, 2008
D-18 Activities of Daily Living Flow Chart dated January 2008
D-19 Activities of Daily Living Flow Chart dated February 2008
D-20 Minimum Data Set (MDS) completed January 18, 2008
D-21 Medical Power of Attorney form dated September 8, 2003 and Relinquishment of Medical POA dated May 18, 2006

VII. FINDINGS OF FACT:

1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on February 11, 2008 to determine his continued medical eligibility for the Medicaid Long-Term Care Program. The new assessment was completed based on the Claimant's proposed transfer from [redacted] Nursing Home to a nursing facility in [redacted] West Virginia. It was determined that the Claimant is medically ineligible for the Medicaid Long-Term Care Program.

2) The West Virginia Medical Institute Nurse testified that four (4) qualifying functional deficits were identified for the Claimant as a result of the PAS assessment. Deficits were identified in the areas of physical assistance with bathing, dressing and grooming, and inability to administer medication.

3) The Claimant was notified of the denial of Long-Term Care services in a letter dated February 22, 2008 (Exhibit D-3).

4) Bureau of Medical Service RN, Norma McQuain represented the Department by reviewing all medical records for the claimant Mr. __________. (Exhibit D-7) Interdisciplinary Progress notes information for January 24, 2008, states "Increase in urinary incontinence" and (Exhibit D-9) Daily skilled Nurses Notes dated January 23, 2008. The GU states "Bladder Incontinence episodes" on the evening shift.

5) (Exhibit D-20) of the Department's evidence The Minimum Data Set (hereinafter MDS) completed January 18, 2008 identifies G-1 ADL Self-Performance, subsection **i. Toilet Use**; How resident uses the toilet room Column A was coded (3) for Extensive Assistance and section H1.Continence Self-Control Categories subsection **b. Bladder Continence** was coded three (3) for frequently incontinent which is an indication the Claimant is incontinent every day but with some control present.

6) Claimant's representative Mr. ___________ testified that the Claimant is a seventy (70) years old mild mentally retarded man, who has never lived alone; he has always lived with someone. He has never lived in a group home environment. If he lived alone or in a group home he would not get the assistance of staff in his daily toileting and prompting needs. The Claimant has more accidents some days then others. But without the constant reminding, he would not be at his current level. Mr. ___________ did indicate the Claimant does wear pull ups on a daily basis which assist him with the occasional accidents.

7) In addition, the Claimant's Medical Power of Attorney Mr. _________ indicated that the Claimant would have his good and bad days it would depend on the day you are testing him. On his bad days his balance is not very good, he needs help walking other days he is fine. Mr. _________ goes on to explain that he is the person who cares for him in the capacity of a family member as taking him to church and on outings away form the nursing facility. But he and his wife are not able to care for Mr. __________ if he had to leave the nursing facility.

8) 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 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 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 February 11, 2008 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 he has four (4) qualifying deficits in the areas of functional limitation.

3) As a result of information presented during the hearing, one (1) additional deficit is being awarded for incontinence as documentation clearly reveals that the Claimant was rated as having daily incontinence in the month January 2008 and on the MDS completed January 18, 2008 giving he a level of needing extensive assistance and frequently incontinence tending to be incontinent daily, but some control present. According to Attachment1 the Preadmission Screening instrument used to evaluate medical eligibility for nursing facility level care. A level 3 is incontinence and a level 2 is occasionally incontinence (less than 3 times per week). Mr. __________ was incontinent more than

three times per week the regulations does not specify that one must be totally incontinent, but must be incontinent , which is more that three times per week The claimant wears pull up on a daily basic for the incontinence that occurs more than three times a week. This was documented on January 23, 2008 of the Daily Skilled Nursing notes of incontinent bladder episodes. Therefore the additional deficit for incontinence will be awarded.

4) The Skilled nursing facility is providing the Claimant the stability of a home environment and the staff is constantly prompting the Claimant on the toileting skills but the incontinence still occurs sometime more than three times a week.

5) The Department's decision to terminate the Claimant's Medicaid Long-Term Care benefits due to medical ineligibility is incorrect.

IX. DECISION:

It is the ruling of the State Hearing Officer to **reverse** 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 5th day of August 2008.

____

Jennifer Butcher
State Hearing Officer, Member Board of Review

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.

IG-BR-46