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

April 23, 2008

_____
_____
_____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 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 March 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,

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]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,

Claimant,

vs. **Action Number 08- BOR- 1111**

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 April 23, 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 April 22, 2008 on a timely appeal filed March 21, 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:

_____, Claimant
_____, Claimant's friend/Power of Attorney
_____, friend of Claimant
[redacted] Social Worker, [redacted]
[redacted] RN, [redacted]

Telephonic participants
Nora McQuain, RN, Bureau for Medical Services
Stephanie Schiefer, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. 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 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 March 10, 2008
D-3 Denial letter dated March 17, 2008
D-4 Physician's Determination of Capacity, Minimum Data Set (MDS) information concerning Claimant's abilities, Activities of Daily Living information for February 2008, Care Plans, Nurses' Progress Notes

Claimant's Exhibits:
C-1 Activities of Daily Living information for March 2008.

VII. FINDINGS OF FACT:

1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on March 10, 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] to a nursing facility in [redacted] WV. 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 March 17, 2008 (D-3).

4) Exhibit C-1, Activities of Daily Living information for March 2008, was entered on behalf of the Claimant. The Claimant's representatives testified that he has become increasingly incontinent as Exhibit C-1 indicates the Claimant had 10 episodes of bladder incontinence from March 1, 2008 to March, 10, 2008 (the date the PAS was completed). This document also reveals that the Claimant had at least one episode of bladder incontinence on 21 of the 24 days listed for March 2008.

   The Bureau for Medical Services Nurse testified regarding the February 2008 Activities of Daily Living information (D-4), which indicates the Claimant had bladder incontinence episodes on 12 of the 29 days listed. She also testified that the physician had listed the Claimant as only occasionally incontinent of bladder and bowel on the PAS.

   The Claimant's representatives also testified that the Claimant could not prepare his own food if he resided alone. It was noted, however, that the Claimant is able to feed himself.

   In addition, the Claimant's representatives indicated that the Claimant would have problems vacating the building in the event of an emergency. The physician noted on the PAS that the Claimant could vacate with supervision. The Bureau for Medical Services Nurse testified that Minimum Data Set information included in Exhibit D-4 indicates the Claimant can either move independently or with supervision in areas concerning transfers/mobility.

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 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 March 10, 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 awarded for incontinence as documentation clearly reveals that the Claimant was incontinent of bladder more than three (3) times per week in March 2008, the month in which the PAS was completed. No deficit is awarded for eating as the Claimant is able to feed himself, and no deficit is awarded for inability to vacate as documentation supports the PAS finding that the Claimant could vacate with prompting/supervision.

4) 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 23rd day of April 2008.

_____

Pamela L. Hinzman
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.

IG-BR-46