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

May 29, 2008

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Dear Mr. ___________:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 22, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for Medicaid coverage for Nursing Facility care.

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 not 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 **uphold** the actions of the Department to deny medical eligibility for coverage through 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
Faye Armstead, B.M.S.
Oretta Keeney, WVMI
__________, [redacted]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

______________,

Claimant,

v. **Action Number: 08-BOR-1140**

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 May 22, 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 May 22, 2008 on a timely appeal, filed March 27, 2008.

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

___________ Claimant's son

RN, Aging and Family Services
RN, Aging and Family Services
Social Worker, Nursing Home
, Social Worker, NH
Administrator, NH
LPN,

Department's Witnesses:
Nora McQuain, 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 medical 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 March 12, 2008
D-3 Eligibility Determination dated March 14, 2008
D-4 Adult Daily Living, ADL Work Sheet dated March 2008
D-4a assessment
D-5 Notice of denial dated March 14, 2008
D-6 Physician's Determination of Capacity to make decisions dated March 11, 2008

VII. FINDINGS OF FACT:

1) The claimant is an 86-year-old male who is residing in the Long Term Care Nursing Facility, He applied for Medicaid coverage for his Nursing Home care in March 2008.

2) A Pre-Admission Screening (PAS) was completed by the nursing facility staff on March 12, 2008 and signed by the facilities physician. This PAS was submitted to the

WV Medical Institute (WVMI) for evaluation. This PAS was evaluated by WVMI who determined that only two deficits could be assigned to this claimant. These deficits were in the areas of bathing and medicating.

3) The Department issued a notice of the denial of medical eligibility for the Long Term Care program on March 14, 2008.

4) Exhibits D-4 and D-4a report that the claimant is independent with Transferring, Eating, Toileting, Walking and Dressing.

5) The claimant's witnesses raised issues regarding the areas of Orientation, Grooming and Dressing.

6) The claimant was assessed on the PAS as being intermittently disoriented. His physician on Exhibit D-6 reported that the claimant demonstrates capacity to make decisions. He has had times when he has been disillusioned to believe there were bugs crawling on him and in his food. The nursing home staff testified that there has been only one incident when he reported seeing bugs since March. The cause of these episodes has not been determined however, his doctor believed they might have been due to a medication problem.

7) The PAS indicated that the claimant was independent in his grooming however, testimony from the nursing home staff revealed that a podiatrist who comes to the nursing home trims his nails. The claimant takes blood thinners and has carpal tunnel syndrome so trimming his own nails would not be safe.

8) The claimant dresses himself without hands on assistance from others. He does have some problems with buttons, but does not require help with them.

9) The claimant's son is concerned for his father's safety if he were to live alone. He reports there was a time when his father was going to get a torch to burn the bugs that he was seeing. He also voiced concerns about his father's problem with keeping up with the doses of medication that are required throughout the day.

10) 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 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 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.

11) 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 states: 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 of Medical Services for the Department of Health and Human Resources has a tool known as the PAS used to determine if there is a need for twenty-four (24) hours a day, seven (7) days a week.

2) Policy §508.2 stipulates that five (5) deficits are required to be found using this PAS tool for a determination of medical eligibility for Medicaid Facility benefits. The Claimant's PAS assessed only two deficits. Evidence and testimony support that the claimant is not independent in grooming and that he should have been assessed at a level 2 for grooming. Evidence and testimony supported the PAS assessment for orientation. The claimant is only intermittently disoriented and policy provides that the applicant must be totally disoriented or comatose for a deficit to be assigned. Testimony supported the PAS assessment of the claimant being independent for dressing. He requires no assistance from others to dress.

3) The addition of a deficit in the area of grooming would increase the claimant's deficits to three deficits however, five is required for approval.

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 Department was correct in their denial of medical eligibility. The claimant does not qualify for Medicaid coverage for nursing facility care. I am ruling to **uphold** the Department's action to deny Medicaid coverage 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 29th Day of May, 2008.

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Sharon K. Yoho
State Hearing Officer