



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

July 10, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 2, 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 April 17, 2008 medical evaluation does 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 **reverse** the Agency's determination that you are medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Cheryl Henson  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
Nora McQuain, RN, BMS/WVMI [REDACTED] Nursing and Rehab

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

\_\_\_\_\_,

**Claimant,**

**vs.**

**Action Number: 08-BOR-1485**

**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 July 2, 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 July 2, 2008 on a timely appeal filed June 2, 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:**

\_\_\_\_\_, Claimant  
\_\_\_\_\_, Claimant's son

Nora McQuain, RN, Bureau for Medical Services, participated telephonically  
Stacy Holstein, WVMI, participated telephonically  
Kelly Johnson, BMS, participated telephonically – observing only

Presiding at the hearing was Cheryl Henson, 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 April 17, 2008
- D-3 Denial letter dated April 23, 2008
- D-4 Physician's determination of capacity, notes, etc.

##### **Claimant's Exhibits:**

None

#### **VII. FINDINGS OF FACT:**

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on April 17, 2008 to determine her continued medical eligibility for the Medicaid Long-Term Care Program. The reason for the evaluation was due to a change in payee from Medicare to Medicaid. The Department determined that the Claimant, who currently resides at Boone Nursing and Rehabilitation, is medically ineligible for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute representative testified that four (4) qualifying functional deficits were identified for the Claimant as a result of the PAS assessment in the areas of vacating a building, bathing, orientation, and medication administration.
- 3) The Claimant was notified of the denial of Long-Term Care services in a letter from West Virginia Medical Institute dated April 23, 2008. (D-3)
- 4) Representatives for the Claimant contend that deficits should be awarded in the following areas:

**Eating**, which is under Functional Abilities. The Claimant was rated as needing "self/prompting" in this area. The Claimant's son acknowledged that at the time of the Pre-Admission Screening in April 2008 the Claimant was probably able to feed herself, although she now requires assistance. The Department pointed to "skilled nurses notes" (D-4) indicating the Claimant can feed herself

**Dressing**, which is under Functional Abilities. The Claimant was rated as "self/prompting". Testimony was provided by witnesses indicating the Claimant requires hands on assistance with dressing. Her son testified that if she tried to put on her pants by herself she would fall. If she tried to

put on a shirt she would get tangled up in it, and she cannot put on her bra without help. He states that someone must tie her shoes for her. She wore tie-up tennis shoes to the hearing. The Claimant has been assessed as having “vascular dementia” with moderate cognitive impairment. The Department pointed to Pre-Admission Screening form which indicates she can do this herself. Department’s exhibit (D-4) shows on “skilled nurses notes” shows that at times the Claimant needs assistance with “activities of daily living” or ADL’s. The Department’s exhibit (D-4) under “PPS Assessment Form” shows that within a period of the “last seven days” under section B.4., the Claimant was unable to recall the location of her own room, staff names and faces, and that she is in a nursing home. She was only able to recall the “current season” during that timeframe.

**Grooming**, which is under Functional Abilities. The Claimant was rated as self/prompting. The Claimant’s son testified that his mother cannot perform many of the grooming tasks mentioned by the Department when explaining what is considered in the “grooming” category, such as washing her hair, brushing her hair, and clipping her nails. The Claimant’s son states that either he clips his mother’s nails, or another family member does because she cannot use “clippers”. He stated that she could probably pull a comb through her hair. The Department’s exhibit (D-4) under “skilled nurses notes” shows again that the Claimant at times has needed assistance with activities of daily living.

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 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 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 administering 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 April 17, 2008 and it was determined that the Claimant received four (4) deficits and is not medically eligible 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.
- 3) Evidence and testimony presented during the hearing support the finding of one (1) additional deficit each in the areas of dressing and grooming, for a total of six (6) deficits in relation to the April 17, 2008 Pre-Admission Screening. The Claimant did not present convincing evidence to allow the award of a deficit in the area of eating. The total deficits awarded are six (6), and do qualify the Claimant medically for Medicaid Long-Term Care Services.
- 4) The Department's decision to deny the Claimant's Medicaid Long-Term Care benefits due to medical ineligibility is not upheld.

### **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 10<sup>th</sup> day of July, 2008**

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**Cheryl Henson  
State Hearing Officer**