**State of West Virginia**
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**
**Office of Inspector General**
**Board of Review**
**1400 Virginia Street**
**Oak Hill, WV 25901**

**Joe Manchin III**
**Governor**

**Martha Yeager Walker**
**Secretary**

August 11, 2008

_____ for _____
_____
_____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 5, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate _____'s Medicaid Long-Term Care (Nursing Facility) services due to medical ineligibility.

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 Long-Term Care Medicaid program is based on current policy and regulations. Some of these regulations state as follows: 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 (West Virginia Medicaid Manual §508.2).

The information which was submitted at your hearing revealed that _____ has only four (4) deficits on the PAS and therefore no longer meets the medical criteria to continue receiving Longer Term Care services.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate _____'s Long-Term Care Medicaid.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Kelley Johnson, Bureau of Medical Services
[redacted] Nursing and Rehabilitation Center

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

**_____,**

**Claimant,**

**v.** **Action Number: 08-BOR-1567**

**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 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 August 5, 2008 on a timely appeal, filed May 16, 2008.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

### II. PROGRAM PURPOSE:

The Program entitled Long-Term Care Medicaid (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's niece and Power of Attorney

Kelley Johnson, MSW, Bureau of Medical Services
Nora McQuain, RN, Bureau of Medical Services
Stacey Holstein, RN, West Virginia Medical Institute (WVMI)

Presiding at the Hearing was Kristi Logan, 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's decision to terminate Claimant's Long-Term Care Medicaid is correct.

## V. APPLICABLE POLICY:

West Virginia Medicaid Manual § 508, 508.1 and 508.2

## VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

**Department's Exhibits**:
D-1 West Virginia Medicaid Manual § 508, 508.1 and 508.2
D-2 Pre-Admission Screening Form dated April 21, 2008
D-3 Notification Letter dated April 24, 2008
D-4 Physician's Determination of Capacity, ADL Flow Record from March 2008 – April 2008 and Nursing Progress Notes from February 2008 – May 2008

**Claimants' Exhibits:**
C-1 None

## VII. FINDINGS OF FACT:

1) Claimant had a Pre-Admission Screening (PAS) form completed on April 21, 2008 to establish continued eligibility for Long-Term Care services. A notification letter dated April 24, 2008 was issued and read in part (D-3):

> Your request for Long-Term Care (Nursing Home) Admission has been denied. Eligibility for Long-Term Care placement being funded by Medicaid requires that you have at least five (5) areas of care needs (deficits) that meet the severity criteria. Documentation does not reflect that you have 5 deficits at the level required.

Claimant had been awarded deficits in vacating in an emergency, bathing, dressing and medication administration. Claimant required one additional deficit in order to continue eligibility for the Long-Term Care Medicaid program (D-2).

2) Claimant's niece and Power of Attorney, _____, presented Claimant's case for her. Ms. _____ contested several areas that she felt Claimant deserved deficits. Ms. _____ testified that Claimant was unable to prepare meals for herself. She is able to feed herself but without someone cooking for her, she could not eat. She stated that the Nursing Home staff clipped Claimant's nails for her because she wasn't allowed to have nail clippers. The only time Claimant's hair was washed was after she had been to the beauty salon for a haircut and they washed it for her. Claimant's attempt at washing her hair would be to run a washcloth over her head.

Ms. _____ stated that Claimant's dementia and confusion are progressively getting worse. She stated she no longer recognizes family members. She will tell Ms. _____ of events that never took place. For example, she told Ms. _____ she had showered but when Ms. _____ checked the bathroom, it was completely dry.

Ms. _____ stated Claimant is an alcoholic and if she is released home, she will start drinking again. Claimant would have to live with Ms. _____, and she is physically unable to care for her at this time.

3) Stacey Holstein, RN with WVMI testified to the findings of the PAS and what qualifies as deficits. Cooking meals is considered meal preparation. Claimant would require physical assistance in feeding herself in order to have a deficit in eating.

According to the documentation provided and Ms. _____'s testimony, it appears that Claimant has the ability to wash her hair, just not the desire to do so. Claimant would require physical assistance in grooming, not just prompting, to receive a deficit.

Claimant was rated as a Level 2 for orientation, meaning she had intermittent confusion. She was given a diagnosis for dementia but according to the nurse's progress notes (D-4) Claimant was alert and oriented most of the time.

4) West Virginia Long Term Care 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 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.

## VIII. CONCLUSIONS OF LAW:

1) As dictated by policy, an individual must have five (5) deficits on the PAS in order to qualify for Long-Term Care services. Claimant was only awarded four (4) on the PAS completed in April 2008.

2) The areas of grooming and eating that were contested by Claimant's niece, Ms. _____, were areas in which Claimant has the physical ability to do herself, although

some prompting or set up may be required. Claimant does not qualify for deficits in these areas.

3) According to the PAS and the medical documentation submitted, Claimant does have some confusion but is mostly alert and oriented. Claimant would have to be determined totally disoriented in order to receive a deficit. No deficit can be awarded in this area.

4) Claimant no longer meets the medical criteria to remain eligible for Long-Term Care services.

## IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate Claimant's Long-Term Care Medicaid.

## X. RIGHT OF APPEAL:

See Attachment

## XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11th Day of August, 2008.**

_____

**Kristi Logan**
**State Hearing Officer**