



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 26, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 19, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid payment for long term nursing facility services.

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 you were assigned four (4) qualifying deficits on a properly completed Pre Admission Screening. Policy for Nursing Facility care requires five (5) deficits to be eligible.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny medical eligibility for the Medicaid, Long Term Care Program.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Nora McQuain, B.M.S.
_____, _____ Nursing and Rehabilitation Center
_____, Power of Attorney

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

_____ ,

Claimant,

v.

Action Number: 08-BOR-1669

**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 September 19, 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 September 19, 2008 on a timely appeal, filed July 14, 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's Witnesses

_____ – Claimant's sister and Power of Attorney

_____ – Claimant's sister-in-law

_____ – Claimant's brother

_____ – Social Services Supervisor [REDACTED] Nursing and Rehabilitation Center

_____ – Administrator of [REDACTED] Nursing and Rehabilitation Center
_____ – Director of Nursing for [REDACTED] Nursing and Rehabilitation Center
_____ – Clinical Supervisor of Nursing for [REDACTED] Nursing Rehabilitation Center

Department's Witnesses:
Nora McQuain, RN - Bureau of Medical Services
Stephanie Schiefer, RN - WV Medical Institute

Presiding at the Hearing was Melissa Hastings, State Hearing Officer and a member of the State Board of Review.

Note: All parties participated telephonically

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in denying claimant's application for the Medicaid, Long Term Care (Nursing Home) Program due to lack of medical eligibility.

V. APPLICABLE POLICY:

West Virginia Long Term Care policy §514.8 through 514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Long Term Care policy §514.8 through 514.8.2
- D-2 Pre-Admission Screening (PAS) completed by [REDACTED] MD on June 16, 2008
- D-3 Notification letter dated June 19, 2008
- D-4 Determination of Capacity dated December 20, 2007

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant is a 63-year-old male who is currently residing at the [REDACTED] Nursing and Rehabilitation Center. A Pre-Admission Screening form (D2) was completed on June 16, 2008 by [REDACTED]
- 2) The Pre Admission Screening (PAS) form (D2) was sent to West Virginia Medical Institute for review for a determination of eligibility for Medicaid payment for long term care.

- 3) A nurse from West Virginia Medical Institute reviewed this PAS and identified four (4) qualifying deficits in the areas of bathing, dressing, grooming and medication administration.
- 4) As a result of the review of the PAS, the agency issued a notification letter (D3) to the Claimant indicating the following:

Your request for Long-Term (Nursing Home) admission has been denied.

It has been determined you are ineligible for long-term care (nursing home) admission based upon WV Medicaid criteria.

REASON FOR DECISION: 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. Your request for long-term care is being denied. The PAS (Pre-Admission screening Form), reflected deficiencies that meet the severity criteria in 4 areas identified below.

Bathing, Dressing, Grooming and Administering Medications are checked.

- 5) Testimony received from the Social Work Supervisor for the long term facility indicates that she agrees with the information provided by the physician completing the Pre Admission Screening Form. Claimant has done well in the facility since his admission.
- 6) Testimony received from the Claimant's sister and brother both indicate that prior to admission to the long term care facility claimant would not keeps himself clean, was uncooperative and sometimes violent. Both siblings believe if claimant is not in the long term facility his condition will deteriorate once again and he will be back in the same condition that he was prior to admission to the facility.
- 7) WV Long Term Care Policy §514.8.2, 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 the individual in the home.

Eating – Level 2 or high (physical assistance to get nourishment, not preparation)

Bathing – Level 2 or high (physical assistance or more)

Grooming – Level 2 or high (physical assistance or more)

Dressing – Level 2 or higher (physical assistance or more)

Continence – Level 3 or high (must be incontinent)

Orientation – Level 3 or high (Totally disoriented, comatose)

Transfer – Level 3 or high (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 a 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: Individual has skilled needs in one or more of these areas – (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) 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, 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) Policy §514.8.2 stipulates that five (5) deficits are required for a determination of medical eligibility for Medicaid Long Term Care Facility benefits.
- 2) A properly completed PAS signed by [REDACTED] on June 16, 2008 and reviewed by a registered nurse from West Virginia Medical Institute assessed four (4) deficits in the areas of bathing, dressing, grooming and medication administration.
- 3) The issues raised by family while important do not conflict with any of the findings of either the physician completing the PAS or the nurse reviewing the PAS.
- 4) Testimony provided by the long term care facility's social service supervisor does not dispute the findings on the PAS.

IX. DECISION:

It is the decision of the State Hearings Officer to **Uphold** the agency's decision to deny the Claimant's application for Medicaid for Long Term Care Facility benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of September, 2008.

Melissa Hastings
State Hearing Officer