



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

February 19, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 10, 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 August 10, 2007 medical evaluation did not 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 **uphold** 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, Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

vs.

Action Number 07- BOR- 2239

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 January 10, 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 January 10, 2008 on a timely appeal filed September 24, 2007.

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
_____, Social Worker, (b)(6) Nursing and Rehab
_____, Occupational Therapist

Nora McQuain, RN, Bureau for Medical Services

All persons participated telephonically.

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 August 10, 2007
- D-3 Denial letter dated August 16, 2007

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on August 10, 2007 to determine her continued medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at (b)(6) Nursing and Rehabilitation Center, is medically ineligible for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute representative testified that zero (0) qualifying functional deficits were identified for the Claimant as a result of the PAS assessment.
- 3) The Claimant was notified of the denial of Long-Term Care services in a letter dated August 16, 2007 (D-3).

- 4) Representatives for the Claimant contend that deficits should be awarded in the following areas:

Vacating a building, which is under question #25 of the Pre-Admission Screening form. The Claimant was rated as being able to vacate the building in an emergency “independently”. The Claimant’s Occupational Therapist, testified she has worked with the Claimant for an extended period of time. She states the Claimant cannot find her way around and frequently takes wrong turns, and she must use a rolling walker with assistance due to her balance problems. The Claimant pointed out that the physician who completed her Pre-Admission Screening form has only visited her three (3) times since she has been at the facility.

Bathing, which is under Functional Abilities. The Claimant was rated as needing self/prompting. Testimony from the Occupational Therapist indicated the Claimant requires physical assistance for this activity. She stated the Claimant must be held onto while transferring to the shower chair, and then must be helped to dry herself. She again referred to the Claimant’s balance issues and the fact that she is a “fall risk”.

Dressing, which is under Functional Abilities. The Claimant was rated as needing self/prompting. Testimony from the Occupational Therapist indicated the Claimant needs physical assistance to perform this activity. She referred to her balance problems and that when she tries to stand to dress she becomes unstable. Information on the Pre-Admission Screening form indicates the Claimant performs this function independently.

Medication administration, which is under question #28. The Claimant was rated as being capable of administering her medications independently. Testimony from the Claimant and the Occupational Therapist indicated the Claimant is incapable of administering her own medications. The Occupational Therapist stated that several attempts had been made to help the Claimant to master this function, but the Claimant had made errors every time. She makes mistakes even when assisted with this activity. The Claimant stated that she overdosed on her medication previously and this is why she ended up in the Nursing Home.

Wheeling, which is under Functional Abilities. The Claimant was rated as “wheels independently”. The Occupational Therapist stated that the Claimant can wheel herself, but has been instructed not to walk without supervision, and she is unable to open doors and get through door openings, etc. without assistance. The Claimant pointed out again she has only seen the physician who completed the Pre-Admission Screening form three (3) times since being at the facility.

- 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 August 10, 2007 and it was determined that the Claimant received zero (0) 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 vacating a building, bathing, medication administration, and wheeling, for a total of four (4) deficits in relation to the August 10, 2007 Pre-Admission Screening. The Claimant did not present convincing evidence to allow the award of a deficit in the area of dressing. The total deficits

awarded are four (4), and do not 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 correct.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** 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 19th day of February, 2008.

**Cheryl Henson
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