



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 8, 2008

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

Dear Mrs. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 6, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to deny your mother's 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 revealed that your mother's condition as of her October 17, 2007 medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify her 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 your mother is medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Pamela L. Hinzman  
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- 2627**

**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 February 8, 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 February 6, 2008 on a timely appeal filed November 2, 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  
\_\_\_\_\_, daughter of Claimant  
\_\_\_\_\_, son-in-law of Claimant  
\_\_\_\_\_ Social Worker, \_\_\_\_\_

*Telephonic participants*

Nora McQuain, RN, Bureau for Medical Services  
Oretta Keeney, Project Manager, Pre-Admission Review, West Virginia Medical Institute

Presiding at the hearing was Pamela Hinzman, 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 October 17, 2007
- D-3 Denial letter dated October 23, 2007
- D-4 MDS Quarterly Assessment Form
- D-5 ERCC Care Plan Notes
- D-6 Records concerning activities of daily living

**Claimant's Exhibits:**

- C-1 Summary of medical conditions
- C-2 Addendum to summary of medical conditions dated February 5, 2008 (admitted into evidence, but not considered in hearing decision)

**VII. FINDINGS OF FACT:**

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on October 17, 2007 to determine her medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at \_\_\_\_\_ is medically ineligible for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute representative testified that three (3) qualifying functional

deficits were identified for the Claimant in the areas of physical assistance with bathing, inability to vacate the building in the event of an emergency, and inability to self-administer medications.

- 3) The Claimant was notified of the denial of Long-Term Care services on October 23, 2007 (D-3).
- 4) The Claimant's daughter testified that her mother has difficulty swallowing large pills and has significant rheumatoid arthritis in her hands. The Claimant has had five motor vehicle accidents which have caused damage to her neck, back and head, and she is in pain on a daily basis even though she takes pain medication. The Claimant is being treated for clinical depression and can become combative without provocation.

Additional information suggested that potential deficits exist in the areas of *total incontinence of bowel/bladder* and *physical assistance with ambulation*. The Claimant's daughter testified that the Claimant was totally incontinent of bladder/bowel at the time of the assessment, however, the Claimant did not understand the importance of reporting this information. The daughter also testified that the Claimant is at major risk for falls as she is unsteady and cannot feel the bottom of her feet.

The Claimant's son-in-law testified that the Claimant has auditory and visual hallucinations, but no longer discusses them for fear of being perceived as mentally unstable by others.

The Bureau for Medical Services Nurse testified regarding Exhibit D-4, an MDS Quarterly Assessment Form. This form was undated, but was included with information in a facsimile transmission from [REDACTED] center dated December 13, 2007. This exhibit indicates that the Claimant was independent in activities of daily living at the nursing facility, but required physical assistance with bathing. The form indicates that the Claimant was continent of bowel and was incontinent of bladder once a week or less. Exhibit D-5, a summary of the Claimant's activities of daily living completed in November 2007, states that the Claimant had an active range of motion, ambulated independently (with an assistive device), and is independent in eating and toilet use.

The Claimant's witnesses testified that the Claimant's condition has deteriorated since the PAS was completed and the ERCC Social Worker indicated that a new PAS would be completed so that these changes could be considered.

***Because records indicate that the Claimant was not totally incontinent of bowel/bladder and was able to ambulate without physical assistance at the time the PAS was completed, no additional deficits can be awarded.***

- 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 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 October 17, 2007 and it was determined that the Claimant is medically ineligible 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. The Claimant's PAS revealed that she has three (3) qualifying deficits in the areas of functional limitation.
- 3) The Claimant's representatives testified that the Claimant's condition has declined since the PAS was completed in October 2007. However, evidence reveals that the PAS accurately reflected her

functional abilities at that time. Therefore, no additional functional deficits can be awarded and the Claimant continues to lack the five (5) deficits required for medical eligibility.

- 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 8<sup>th</sup> day of February, 2008.**

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**Pamela L. Hinzman  
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