



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 13, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 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 October 31, 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,

Pamela L. Hinzman  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
Nora McQuain, RN, Bureau for Medical Services  
[REDACTED] Director of Social Services, [REDACTED]

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

\_\_\_\_\_,  
**Claimant,**

**vs.**

**Action Number 07- BOR- 2739**

**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 13, 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 8, 2008 on a timely appeal filed December 4, 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  
\_\_\_\_\_, Director of Social Services, [REDACTED]

*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 31, 2007
- D-3 Denial letter dated November 20, 2007
- D-4 Physician's Determination of Capacity
- D-5 Minimum Data Set (MDS) information concerning Claimant's abilities
- D-6 [REDACTED] Nursing Progress Notes
- D-7 Activities of Daily Living information

**Claimant's Exhibits:**

- C-1 Physician Progress Notes from Dr. [REDACTED]
- C-2 [REDACTED] Consultation Report and/or Physician Referral from Dr. [REDACTED]

**VII. FINDINGS OF FACT:**

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on October 31, 2007 to determine her continued medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at [REDACTED] Center [REDACTED] 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 November 20, 2007 (D-3).
- 4) The [REDACTED] Director of Social Services testified that the Claimant has been a resident at the nursing home for the past six years and has flourished as a result of the care she has received at the facility. She testified that the Claimant is content at [REDACTED] and becomes non-compliant in taking medication when she lives at home.

The Claimant, a diabetic who has been diagnosed with bipolar disorder, Alzheimer's disease and dementia, testified that she cannot live alone because she has memory problems and becomes ill after leaving the long-term care facility. The Claimant's daughter provided Exhibit C-1, Physician Progress Notes from Dr. [REDACTED] recorded in November 2007. This document states that the Claimant should not be removed from [REDACTED] as she is highly likely to experience a recurrence of psychiatric decompensation. Exhibit C-2, a report from Dr. [REDACTED] dated December 12, 2007, states that Dr. [REDACTED] is "highly concerned of any discharge to the community. She (the Claimant) is unable to live by herself... I expect deterioration in her symptoms if she were to live by herself."

While the Claimant and her witnesses expressed concern regarding the Claimant's potential for relapse, none of the PAS findings concerning functional ability were contested. The Bureau for Medical Services Nurse reviewed Exhibits D-4, D-5, D-6 and D-7 which address the Claimant's capacity to make decisions and functional abilities.

- 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 October 31, 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 zero (0) qualifying deficits in the areas of functional limitation.
- 3) The Claimant and her witnesses testified that the Claimant's condition has improved since she has resided at [REDACTED] and voiced concern about the potential for relapse should the Claimant leave the nursing facility. While these are valid concerns, no testimony was provided to establish deficits in areas of functional limitation. Therefore, no functional deficits can be awarded and the Claimant continues to lack the five (5) deficits required to establish 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 13<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