State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 10, 2008

_____ for
_____
_____
_____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 4, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Medicaid Long-Term Care (Nursing Facility) benefits.

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.

Eligibility for Medicaid, Long Term Care (Nursing Facility) Services is based on current policy and regulations and requires eligible individuals to meet both medical and financial criteria. 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.

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to qualify you for nursing facility level of care.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your Medicaid Long-Term Care benefits based on medical eligibility.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Nora McQuain, RN, BMS
[redacted] Center

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 07-BOR-2741**

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 April 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 originally scheduled to convene on March 11, 2008 but was rescheduled at the request of the Claimant's representative and convened on April 4, 2008 on a timely appeal filed November 15, 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's daughter/guardian
[redacted] LSW, [redacted]
Nora McQuain, RN, BMS
Stephanie Schiefer, RN, WVMI

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

IV. QUESTION TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in determining that the Claimant fails to meet the medical eligibility criteria for participation in the Medicaid Long-Term Care (Nursing Facility) Program.

V. APPLICABLE POLICY:

West Virginia Medicaid Manual, 508, 508.1 and 508.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit 1	West Virginia Medicaid (WV Provider Manual) Policy Manual, 508, 508.1 and 508.2 (Medicaid, Long-Term Care)
Exhibit 2	Pre-Admission Screening (PAS) dated 10/31/07
Exhibit 3	Denial Notice from WVMI dated October 18, 2007
Exhibit 4	Physician's Determination of Capacity (9/12/07)
Exhibit 5	MDS for Resident [redacted] Numeric Identifier [redacted]
Exhibit 6	Co. – MDS ADL Report for dates 10/01/07 through 10/16/07
Exhibit 7	Nurses Notes for period 10/10/07 through 113/07

VII. FINDINGS OF FACT:

1) On or about November 5, 2007, the Claimant was notified that her Medicaid Long-Term Care benefits were denied (Exhibit 3). This notice states:

> An evaluation of your current limitations related to your medical condition(s) was conducted based on the information submitted to WVMI on the Pre-Admission Screening (PAS) form. 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, skilled needs and administering medications.

2) The Department cited Medicaid regulations and presented testimony to explain how Medicaid policy was applied to the medical findings documented on the Claimant's Pre-Admission Screening Form (PAS) completed on October 31, 2007 (Exhibit 2). According to the WVMI RN, the Claimant's physician completed the medical assessment and his documentation was relied upon by WVMI to identify qualifying deficits. The Department noted that the Claimant's medical assessment identified only four (4) qualifying deficits, and as a result, she is no longer meets Medicaid medical eligibility for a nursing facility level of care.

3) The Claimant's representative contested the assessed level in walking (Exhibit 2, Section 26.i) as the Claimant is only able to walk for approximately 20 minutes and then she gets "winded" and needs to take a rest. Additionally, she is concerned that her mother will not be able to manage her medications or eat correctly.

It should be noted that the Claimant was awarded a deficit in medication administration, and while eating correctly (diet) is a concern, a deficit can only be awarded in eating if the individual requires physical assistance to consume food (meal preparation is not considered).

4) In order to qualify for a deficit in walking, the individual must be assessed at a level 3 (One Person Assistance) in walking. Testimony provided by the Claimant's representative fails to meet this level of need and the documentation cited in Exhibits 5, 6 and 7 confirm that the Claimant ambulates with a walker - level 2 (Supervised/Assistive Device) in walking. Based on the evidence, the Claimant does not qualify for a deficit in walking.

5) [redacted] LSW, [redacted] purported that the PAS evaluation is accurate and that the Claimant has expressed her desire to live in the community with community supports.

6) WV DHHR Medicaid, Long Term Care Policy §508.2, (Medical Eligibility) states 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. See Attachment. 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: 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 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: 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 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 states 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 (PAS) is utilized for physician certification of the medical needs of individuals applying for the Medicaid benefit. An individual must have a minimum of five (5) qualifying deficits on the PAS in order to qualify medically. These deficits are derived from a combination of assessment elements on the PAS completed by the evaluating physician.

2) The October 31, 2007 PAS reveals that the Claimant demonstrated four (4) program qualifying deficits.

3) The evidence submitted at the hearing fails to identify any additional program qualifying deficits.

4) Whereas the Claimant demonstrates only four (4) qualifying deficits, continued medical eligibility for participation in the Medicaid Long-Term Care program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's Medicaid Long-Term Care (Nursing Facility) benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of April, 2008.

_____

Thomas E. Arnett
State Hearing Officer