



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

April 23, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 15, 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 March 20, 2008 medical evaluation does 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 **reverse** 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, BMS/WVMI/Sunbridge NH

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

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

**vs.**

**Action Number 08- BOR- 785**

**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 April 15, 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 April 15, 2008 on a timely appeal filed January 31, 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
- \_\_\_\_\_, LSW, [REDACTED] Nursing Home
- \_\_\_\_\_, Claimant's brother and Health Care Surrogate
- \_\_\_\_\_, Claimant's sister-in-law
- \_\_\_\_\_, Claimant's niece
- \_\_\_\_\_, Claimant's niece
- \_\_\_\_\_, Director of Nursing for [REDACTED] Nursing Home
- \_\_\_\_\_, Ombudsman
- \_\_\_\_\_, observing

Nora McQuain, RN, Bureau for Medical Services, participated telephonically  
Oretta Keeny, WVMI, 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 March 20, 2008
- D-3 Denial letter dated March 21, 2008
- D-4 Physician's determination of capacity, notes, etc.

**Claimant's Exhibits:**

- C-1 Letter from Dr. Sta. Ana, Jr. dated March 20, 2008
- C-2 Physician's determination of capacity dated 2-11-08
- C-3 Therapy Progress notes
- C-4 Copy of Social Progress notes

**VII. FINDINGS OF FACT:**

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on March 20, 2008 to determine her continued medical eligibility for the Medicaid Long-Term Care Program. The Department determined that the Claimant, who currently resides at [REDACTED] Nursing Home, 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 as a result of the PAS assessment in the areas of vacating a building, bathing, and medication administration.
- 3) The Claimant was notified of the denial of Long-Term Care services in a letter dated March 21, 2008. (D-3)
- 4) Representatives for the Claimant contend that deficits should be awarded in the following areas:

**Walking**, which is under Functional Abilities. The Claimant was rated as needing “supervised/assistive device”. The Claimant testified that she only walks in her room to the bathroom and sometimes uses her wheelchair. She holds on to things. Testimony was provided by witnesses that the Claimant participates in a Restorative Walking Program and only walks in the corridor outside her room when participating in this program, with supervision and sometimes physical assistance. The Claimant states that she sometimes requires physical assistance when walking. The social worker stated that she has only seen the Claimant in her wheelchair or walker w/one person assistance. The Claimant does not walk alone outside her room. The MDS form (D-4) indicates the Claimant can walk in the corridor independently.

**Wheeling**, which is under Functional Abilities. The Claimant was rated as “no wheelchair”. Testimony was provided by witnesses indicating the Claimant does have a wheelchair and uses it in and out of her room. The Social Worker indicated the Claimant is able to maneuver the wheelchair herself, but needs assistance getting through doors, etc.

**Dressing**, which is under Functional Abilities. The Claimant was rated as needing self/prompting. Testimony from the Social Worker indicates that Claimant has changes in her abilities due to her cognitive changes. She gets confused. The Director offered testimony that the Claimant does need physical assistance with pulling up her pants, socks, etc. The Claimant testified she can do this for herself. The Claimant’s niece Ms. Hoover stated she has been with her aunt every other day since she has been in the Nursing Home. She states the Claimant can dress herself, but it is very difficult for her. The Department pointed to the MDS (D-4) and notes which indicate the Claimant can dress herself independently.

**Grooming**, which is under Functional Abilities. The Claimant was rated as self/prompting. The Claimant testified she can groom herself. The Director indicated the Claimant needs help with brushing her teeth at times.

- 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 March 20, 2008 and it was determined that the Claimant received three (3) 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 walking and wheeling, for a total of five (5) deficits in relation to the March 20, 2008 Pre-Admission Screening. The Claimant did not present convincing evidence to allow the award of a deficit in the areas of dressing and grooming. The total deficits awarded are five (5), and do 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 not correct.

#### **IX. DECISION:**

It is the ruling of the State Hearing Officer to **reverse** 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 23<sup>rd</sup> day of April, 2008**

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**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