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

March 25, 2008

_____
_____
_____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 21, 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 February 5, 2008 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] Social Worker, [redacted]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,

Claimant,

vs. **Action Number 08- BOR- 872**

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 March 25, 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 March 21, 2008 on a timely appeal filed February 11, 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:

[redacted], Claimant
[redacted] Social Worker, [redacted]
[redacted] RN, [redacted]
Dr. [redacted] Claimant's attending physician

Telephonic participants
Nora McQuain, RN, Bureau for Medical Services
Oretta Keeney, RN, 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 February 5, 2008
D-3 Supporting documentation (including Physician Determination of Capacity, Minimum Data Set information, Activities of Daily Living information, progress notes from Dr. [redacted] and Nurses' Progress Notes)
D-4 Denial letter dated February 6, 2008

VII. FINDINGS OF FACT:

1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on February 5, 2008 to determine his continued medical eligibility for the Medicaid Long-Term Care Program. The PAS indicates that the new assessment was completed based on the Claimant's proposed transfer to another facility. It was determined that the Claimant, who currently resides at [redacted], is medically ineligible for the Medicaid Long-Term Care Program.

2) The West Virginia Medical Institute representative testified that two (2) qualifying functional deficits were identified for the Claimant as a result of the PAS assessment. Deficits were identified in the areas of physical assistance with bathing and inability to administer medication.

3) The Claimant was notified of the denial of Long-Term Care services in a letter dated February 6, 2008 (D-4).

4) The Claimant- who has been diagnosed with chronic paranoid schizophrenia, severe psychogenic polydipsia and electrolyte imbalances- testified that he is confused much of the time and cannot "keep up with things." Representatives from [redacted] indicated that the Claimant has developed additional problems with personal hygiene since the date the PAS was completed.

   Dr. [redacted] the Claimant's attending physician, testified that the Claimant is non-compliant and he does not believe the Claimant can manage if he is unmonitored. He testified that the Claimant has electrolyte imbalances and his intake of tap water exacerbates this condition.

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 February 5, 2008 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 he has two (2) qualifying deficits in the areas of functional limitation.

3) The Claimant's witnesses testified that his personal hygiene problems have worsened since the PAS was completed and that he could not manage on his own. While these are valid concerns, no information was provided to dispute the PAS findings based on the Claimant's condition on the date of the assessment. Therefore, no additional deficits can be awarded.

4) The Department's decision to terminate 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 25th day of March, 2008.

Pamela L. Hinzman
State Hearing Officer