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 23, 2008

______________, Jr. for
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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 the Medicaid Long-Term care benefit.

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

Pc: Erika H. Young, Chairman, Board of Review
Nora McQuain, RN, BMS
Administrator, [redacted] Manor, Inc.

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

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Claimant,

v. **Action Number: 08-BOR-873**

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 23, 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 4, 2008 on a timely appeal filed November 15, 2007.

It should be noted that Medicaid benefits have continued pending a hearing decision.

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:

____________, Jr., Claimant's son/representative
Nora McQuain, RN, BMS (Participated telephonically)
Stephanie Schiefer, RN, WVMI (Participated telephonically)

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

IV. QUESTION TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in its determination that the Claimant fails to meet the medical eligibility criteria for continued 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 11/7/07
Exhibit 3	Denial Notice from WVMI dated December 6, 2007
Exhibit 4	Physician's Determination of Capacity (1/31/07)
Exhibit 5	Nurse's Notes for period 9/25/07 through 11/13/07
Exhibit 6	ADL Activity Report: 9/18/07-9/24/07 & 12/11/07 – 12/17/07

Claimant's Exhibits:

Claimant 1	Pre-Admission Screening (PAS) dated 4/3/08

VII. FINDINGS OF FACT:

1) On or about December 6, 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 1 areas [sic] identified below – bathing.

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 November 17, 2007 (Exhibit 2). According to the WVMI RN, the Claimant's physician completed the medical assessment and that documentation was relied upon by WVMI to identify qualifying deficits. The Department noted that the Claimant's medical assessment identified only one (1) qualifying deficit, and as a result, she no longer meets Medicaid medical eligibility criteria for nursing facility level of care.

3) The Claimant's representative contends that the PAS (Exhibit 2) completed in November 2007 is not an accurate reflection of the Claimant's medical condition. In addition to bathing, he contends that the Claimant should have been awarded a deficit in dressing, grooming, eating vacating and skilled needs. He further indicated that a new PAS was completed on April 3, 2008 that identifies bathing, dressing and grooming as deficits.

Because the new PAS had not yet been reviewed for eligibility by WVMI, evidence was taken during the hearing and the record remained open to allow WVMI an opportunity to review the new PAS for eligibility. If medical eligibility could not be established, the Department was directed to provide a copy of the April 3, 2008 PAS to the Board of Review accompanied by a summary of the Department's findings/decision. These documents were received by the Board of Review on April 9, 2008 and have been identified as Claimant 1.

4) Claimant's Exhibit 1 was received by the Board of Review on April 9, 2008 and identifies three (3) program qualifying deficits - bathing, grooming and dressing. It should be noted that grooming and dressing (bathing was awarded in Exhibit 2) are two areas that the Claimant's representative was contesting.

5) In addition to the three (3) deficits awarded in Claimant's Exhibit 1, the Claimant's representative contends that the Claimant should have been awarded a deficit in eating, vacating and skilled needs (irrigations).

Eating – The physician assessed the Claimant at a level 1 (Self/Prompting) on both PAS assessments (D-2 and Claimant 1) and the ADL Activity form (D-6) submitted into evidence does not indicate that the Claimant requires assistance with meals/eating. The Nurse's Notes (D-5) indicate that the Claimant goes to the dining room for her meals but fails to provide any documentation regarding the level of assistance, if any, the Claimant requires with eating. The Claimant's representative contends that the Claimant cannot effectively eat because she is unable to cut her food or open containers. The Department purported that meal preparation is not considered when assessing an individual's ability to eat and this is noted in Section 26.a. on the PAS assessment. Based on the evidence, a deficit cannot be awarded in eating.

Skilled Needs – The Claimant has a portacath in her shoulder that requires flushing. The Department purported that flushing is a different procedure than irrigation and does not qualify as a skilled need / deficit under the skilled needs section. A review of the skilled (Professional and technical care) needs section of the PAS [#27] does not include flushing and policy found in 508.2 lists the following as qualifying deficits in the skilled needs section – suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressing or irrigations. Based on the evidence, the Claimant does not qualify for a deficit in this area.

Vacating – Exhibit D-2 indicates in Section #25 that the Claimant is able to vacate the building in an emergency "independently." The PAS completed on April 3, 2008 (Claimant 1) indicates that the Claimant is able vacate the building with supervision. The Claimant was assessed as a level 2 (supervised/assistive device) in walking in both medical assessments and supporting documentation (D-5 Nurses Notes & D-6 ADL Activity) support this level of ambulation. Because the Claimant can ambulate without hands-on physical assistance, the Claimant is physically able to vacate the building with supervision in the event of an emergency. Therefore, a deficit cannot be awarded in vacating.

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 Long-Term Care 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 November 17, 2007 PAS (D-2) reveals that the Claimant demonstrated only one (1) program qualifying deficit in the area of bathing. A subsequent PAS completed on April 3, 2008 (Claimant 1) demonstrates three (3) program qualifying deficits – bathing, dressing and grooming.

3) The evidence submitted at the hearing fails to identify any additional program qualifying deficits. While it is clear that the Claimant requires some skilled needs, the evidence fails to demonstrate the need for nursing facility level of care.

4) Whereas the Claimant demonstrates only three (3) 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 23rd Day of April, 2008.

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Thomas E. Arnett
State Hearing Officer