



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

February 1, 2010

-----For: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 14, 2009. Your hearing request was based on the Department of Health and Human Resources' termination of Long Term Care Medicaid based on 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.

The determination of medical eligibility for Long Term Care Medicaid is based on current policy and regulations. These regulations state that to qualify medically for the nursing facility Medicaid benefit, an individual must need full-time direct nursing care. 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 Medicaid applicants. An individual must have a minimum of five deficits identified on the PAS in order to qualify for the Medicaid nursing facility benefit. (Nursing Facility Services Provider Manual Chapter 514)

The information submitted at your hearing revealed that the Department was correct in its assessment of four deficits and was correct in its determination of medical ineligibility for the program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposed termination of Long Term Care Medicaid based on unmet medical eligibility.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Lorna Harris, Bureau of Medical Services
Stacy Ledman, WVMI

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

-----,

Claimant,

v.

Action Number: 09-BOR-1427

**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 February 1, 2010 for -----. The DHHR Board of Review held this hearing in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. The Board of Review convened this fair hearing on September 14, 2009 on a timely appeal, filed June 26, 2009.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled Long Term Care Medicaid (nursing facility services) 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 (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

III. PARTICIPANTS:

-----, Claimant

-----, Claimant's representative

-----, Claimant's witness, Director of Social Services, [REDACTED] Park Nursing Home

-----, Claimant's witness, Director of Nursing, [REDACTED] Park Nursing Home

-----, Claimant's witness, Director of Human Resources, [REDACTED] Park Nursing Home

Kelley Johnson, Department Representative, Bureau of Medical Services
Stacy Ledman, RN, Department Representative, WV Medical Institute (WVMI)

Representatives from DHHR and WVMI participated by the LeaderPhone teleconferencing service.

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided was whether the Department was correct in its determination that the Claimant was not medically eligible for Long Term Care Medicaid.

V. APPLICABLE POLICY:

Nursing Facility Services Provider Manual, Chapter 514; §514.8; §514.8.1; §514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Nursing Facility Services Provider Manual, Chapter 514; §514.8; §514.8.1; §514.8.2
- D-2 Pre-Admission Screening (PAS) dated June 18, 2009
- D-3 Notice of Denial Determination dated June 22, 2009
- D-4 Supporting documentation

Claimant's Exhibits:

- C-1 Psychological Evaluation of Claimant, dated April 22, 2009 from [REDACTED] Psychology & Therapy, [REDACTED] WV
- C-2 WV DHHR Psychiatrist's Summary (Form DFA-RT-15a) for Claimant, dated June 26, 2009, signed by licensed psychologist [REDACTED] PsyD
- C-3 Statement from RAPIDS, WV DHHR eligibility computer network, NOTICE OF CONTRIBUTION TO THE COST OF CARE, for Claimant
- C-4 Department of [REDACTED] Imaging Report from [REDACTED] [REDACTED] WV, dated March 19, 2009
- C-5 Report of Consultation from [REDACTED] Rest Home, [REDACTED] WV, between [REDACTED] O. and a [REDACTED] of [REDACTED] Mental Health Center, [REDACTED] WV.

VII. FINDINGS OF FACT:

- 1) Claimant is a 54-year old female recipient of Long Term Care Medicaid, residing at [REDACTED] Park Nursing Home, a nursing facility. A Pre-Admission Screening (PAS) form was completed on June 18, 2009 (Exhibit D-2) to reassess the Claimant's medical eligibility for nursing facility services.

- 2) Kelly Johnson, representative for the Department's Bureau for Medical Services, testified that the Nursing Facility Services Provider Manual, Chapter 514, contains the applicable policy pertaining to medical eligibility for Long Term Care Medicaid. From this chapter, §514.8.2 (Exhibit D-1) states, in pertinent part:

514.8.2 MEDICAL ELIGIBILITY

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.

- 3) Stacy Ledman, a registered nurse with West Virginia Medical Institute (WVMI), testified that the Claimant had deficits in four areas: *bathing, dressing, grooming and administering medication*.
- 4) The Department issued a Notice of Denial Determination (Exhibit D-3) to the Claimant on or about June 15, 2009. The notice states, in pertinent part:

NOTICE: YOUR REQUEST FOR LONG-TERM CARE (NURSING HOME) ADMISSION HAS BEEN DENIED.

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.

- 5) -----, Claimant's witness and representative, testified that he had observed in outings with Claimant that her incontinence was getting progressively worse. Department representative Kelly Johnson replied that in order to receive a deficit for incontinence, the condition must be total.
- 6) Claimant's representative -----read into the record the "Recommendation" section from a psychological evaluation completed on April 22, 2009 and signed by [REDACTED] PsyD. It read as follows:

-----'s performance on testing yielded several areas of concern. It is likely that her recent history of strokes has adversely impacted her cognitive abilities, especially in the areas of language, reasoning, and judgment. Her severe impairment in memory is likely exacerbated by personality characteristics rather than organic atrophy yet there is mild to moderate impairment in this area as well.

----- will require some supervision of her activities of daily living. She will also require a conservator and guardian as she will need assistance in managing finances as well as making informed decisions about health care and other life issues. She will function best in a least restrictive environment that fosters her independence yet provides her structure and safety. It is important to be mindful that ----- is vulnerable to dependency and should be encouraged to remain as independent as possible in her day-to-day activity. There are aspects of her mood that may benefit from further understanding. Her affect was odd and somewhat nonreactive/blunted; this can either be attributable to her vascular condition or be a reflection of a longer existing mental illness. Assessment of her mood is recommended. It seems that -----'s condition is progressive and life long.
- 7) Evidence and testimony were not sufficient to substantiate a finding of additional deficits.

VIII. CONCLUSION OF LAW:

Medical eligibility for Long Term Care Medicaid requires a minimum of five deficits in functional areas. The Department identified and awarded four deficits on the Claimant's June 18, 2009, PAS. There was no testimony or evidence sufficient to substantiate findings of additional deficits on the part of the Department. The Department was correct to terminate Long Term Care Medicaid based on the lack of medical eligibility for the program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposed termination of Long Term Care Medicaid based on medical ineligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of February, 2010.

**Stephen M. Baisden
State Hearing Officer**