



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

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

March 11, 2010

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c/o -----  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held September 15, 2009 for ---. Your hearing request was based on the Department of Health and Human Resources' denial 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 direct nursing care 24 hours a day, seven 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 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 that was submitted at your hearing revealed that the Department should have awarded five deficits and was incorrect in its determination of medical ineligibility for the program.

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

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Lorna Harris, Department Representative  
Lisa Goodall, WVMI

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1790**

**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 March 11, 2010 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 October 27, 2009 on a timely appeal, filed August 24, 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's Witness and Representative  
Nora McQuain, Department Representative  
Lisa Goodall, RN, West Virginia Medical Institute

All persons participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not 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; §514.8.1; §514.8.2
- D-2 Pre-Admission Screening (PAS) dated August 17, 2009
- D-3 Notice of Denial Determination dated August 19, 2009
- D-4 Supporting documentation
- D-5 Letter from ----- dated September 10, 2009

**Claimant's Exhibit:**

- C-1 Additional documentation

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 92-year old female applicant for Long Term Care Medicaid. A Pre-Admission Screening (PAS) form was completed on August 17, 2009 (Exhibit D-2) to determine the Claimant's medical eligibility for nursing facility services.
- 2) The Department issued a Notice of Denial Determination (Exhibit D-3) to the Claimant on or about August 19, 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.

- 3) Lisa Goodall, a registered nurse with West Virginia Medical Institute (WVMI), testified that the Claimant was awarded deficits in four areas: *bathing, grooming, dressing, and medication administration.*
- 4) Nora McQuain, 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)
  - Contenance - 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.

- 5) -----, the Claimant's granddaughter, testified that the Claimant should have been awarded deficits in the following areas: *eating, decubitus, vacating a building, incontinence of bladder, incontinence of bowel, and orientation.*
- 6) ----- testified that the Claimant has a decubitus sore. She additionally testified that she had work experience caring for individuals, and is familiar with decubitus sores.
- 7) ----- testified that the Claimant is unable to vacate a building on her own due to her disorientation. The August 17, 2009, PAS (Exhibit D-2) assessed the Claimant as able to vacate 'with supervision.'
- 8) ----- testified that the Claimant is incontinent of bladder and bowel. She testified that the Claimant uses incontinence supplies. She described the Claimant's bowel incontinence as occasional.

A letter from -----, MD, dated October 19, 2009 was submitted on the Claimant's behalf as part of additional documentation (Exhibit C-1). This letter, although considerably after the time of the PAS, was admitted and considered with weight appropriate to its age. The letter states, in pertinent part:

----- is incontinent of urine. Requires use of protective undergarments and assist with toileting.

- 9) ----- testified that, with regard to eating, the Claimant forgets how to eat, and needs prompting. The August 17, 2009, PAS (Exhibit D-2) assessed the Claimant as requiring prompting.
- 10) Ms. McQuain testified that the Department had no dispute of the arguments presented on the Claimant's behalf.

### **VIII. CONCLUSION OF LAW:**

- 1) 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 August 17, 2009, PAS. Testimony regarding the areas of eating, the ability to vacate a building, and incontinence of bowel matched the assessed findings on the PAS. Testimony regarding decubitus and orientation was unconvincing as it was not expert testimony. The letter from the Claimant's doctor documented her incontinence of bladder, and, although this letter was not timely, the testimony from the Claimant's granddaughter affirmed the Claimant's history of incontinence. Incontinence of bladder should have been awarded to the Claimant. With five deficits, the Department was incorrect to deny 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 **reverse** the Department's denial 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 \_\_\_\_\_ Day of March, 2010.**

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**Todd Thornton**  
**State Hearing Officer**