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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

December 10, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held on December 3, 2010. 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 one deficit 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
Amy Workman, Bureau of Medical Services
[redacted] Nursing and Rehabilitation Center

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-----,
Claimant,

v. **Action Number: 10-BOR-1940**

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 December 10, 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 December 3, 2009 on a timely appeal, filed September 13, 2010. This hearing was originally scheduled for October 26, 2010, but was rescheduled at Claimant's request.

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
-----, Administrator, [redacted] Nursing and Rehabilitation, Claimant's Representative
-----, Director of Nursing, [redacted] Nursing and Rehabilitation, Claimant's Witness
-----, Therapy Manager, [redacted] Nursing and Rehabilitation, Claimant's Witness
-----, RN Supervisor, [redacted] Nursing and Rehabilitation, Claimant's Witness

Kelley Johnson, WV Bureau of Medical Services, Department's Representative
Lisa Goodall, RN, WV Medical Institute (WVMI), Department's Witness

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

The hearing was conducted via telephone conference call.

The hearing officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided was whether the Department was correct in its determination that the Claimant was medically ineligible 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 August 26, 2009
D-3 Notice of Denial Determination dated August 31, 2009
D-4 Supporting documentation

VII. FINDINGS OF FACT:

1) Claimant is a 72-year old female resident of [redacted] Nursing and Rehabilitation, a nursing and rehabilitation facility in [redacted] WV. Medical staff at [redacted] completed a Pre-Admission Screening (PAS) form on September 8, 2010 (Exhibit D-2) to assess the Claimant's medical eligibility for continuing nursing facility services.

2) Department's representative 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 (Exhibit D-1) states, in pertinent part:

> **514.8.1 APPLICATION PROCEDURE**
> An application for nursing facility benefits may be requested by the resident, the family/representative, the physician, or a health care facility. The steps involved in approval for payment of nursing facility services are:
>
> - The application for NF service is made to the local DHHR office. The determination of financial eligibility for Medicaid is the responsibility of the local office; and
> - The medical eligibility determination is the responsibility of the Bureau for Medical Services based on a physician's assessment

of the medical and physical needs of the individual. This assessment must have a physician's signature dated not more than sixty days prior to the start of services.

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) Department's witness, a registered nurse with West Virginia Medical Institute (WVMI), testified that the Claimant had deficits in one area, *bathing*.

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 <u>DENIED</u>.

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 representative, the administrator of [redacted] Nursing and Rehabilitation, testified that he had reviewed Claimant's PAS and records and he could not determine in what area Claimant could receive another deficit. He noted that the records indicate Claimant has improved in several areas since Claimant's PAS was conducted on September 8, 2010. Claimant's representative added that while everything in Claimant's records indicates she is improving, Claimant does not feel this is the case, which was why she and the facility undertook the appeals process.

6) Claimant's witness, [redacted] Nursing and Rehabilitation's Director of Nursing, agreed with the statement that Claimant had improved in several areas since the PAS, and the witness stated that she did not think another deficit could be assessed in any area.

7) Claimant testified that she needed the Nursing Home care. She said that she could not take her medicine and could not take care of herself. She stated that she could not get up and do the things she used to do for herself. She added that if she went to live in her home, she would not be able to climb the steps there. Neither she nor her witnesses provided any substantial evidence or testimony that would warrant 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 one deficit on the Claimant's September 8, 2010, PAS. There was no testimony or evidence sufficient to substantiate findings of additional deficits for 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 10th Day of December, 2010.

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Stephen M. Baisden
State Hearing Officer