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

August 29, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on July 26, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Long Term Care Medicaid admission 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 no 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 denial 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] WV

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-----,

Claimant,

v. **Action Number: 11-BOR-1308**

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 August 29, 2011 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 July 26, 2011 on a timely appeal, filed May 31, 2011.

II. PROGRAM PURPOSE:

The program entitled Long Term Care Medicaid (nursing facility services) is a medical service that is covered by the State's Medicaid Program. Payment for care is made to nursing homes that 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 Mother and Witness
-----, Claimant's Witness, Assistant Director of Nursing, [redacted] WV
-----, Claimant's Witness, Social Worker, [redacted] WV
-----, Ombudsman, Legal Aid of WV

Kelley Johnson, WV Bureau of Medical Services, Department's Representative
Karen Keaton, 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 is whether the Department is correct in its determination that the Claimant is 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 May 10, 2011
D-3 Notice of Denial Determination dated May 11, 2011
D-4 Nursing notes from [redacted] WV

VII. FINDINGS OF FACT:

1) Claimant is an 41-year old male, currently residing in [redacted] WV. Medical staff at [redacted] completed a Pre-Admission Screening (PAS) form on May 10, 2011 (Exhibit D-2) to assess the Claimant's medical eligibility for the WV Medicaid Long-Term Care program.

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.

. . .

A new medical assessment must be done for Medicaid eligibility for the nursing facility resident for all of the following situations:

- Application for the nursing home benefit;
- Transfer from one nursing facility to another;
- Previous resident returning from any other than an acute care hospital;
- Resident transferred to an acute care hospital, then to a distinct skilled nursing unit, then returns to the original nursing facility; and
- Resident converts from private pay to Medicaid.

3) Department's witness, a registered nurse with West Virginia Medical Institute (WVMI), testified that on the May 10, 2011, PAS, the Claimant had no deficits.

4) The Department issued a Notice of Denial Determination (Exhibit D-3) to the Claimant on or about May 11, 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 testified that on the May 10, 2011, PAS (Exhibit D-2), her son should have received deficits in a number of areas. These are as follows:

> ***Vacating a building during an emergency*** – The PAS indicated that Claimant could vacate a building during an emergency independently. Claimant's witness, his mother, testified that Claimant would not be able to vacate in an emergency because he could not see due to diabetic retinopathy, and because he was not able to walk. Department's representative testified that there is no documentation to indicate Claimant is blind, nor is there documentation to indicate he is unable to walk.
>
> ***Bathing*** – The PAS indicated that Claimant was able to bathe himself without assistance. Claimant's witness testified that Claimant had nerve damage in his legs so that he could not get into or out of a bathtub alone.

She stated that he would not be able to determine if the water were too hot or too cold due to the nerve damage. Department's witness testified that there was no supporting documentation to indicate the nursing home staff had to help Claimant into and/or out of the bath.

Grooming – The PAS indicated that Claimant was able to groom himself without assistance. Claimant's witness testified that she had to help him with his grooming. Department's witness testified that the supporting documentation did not indicate that staff assisted Claimant with oral care, hair care, or any other element of personal grooming.

Dressing – The PAS indicated that Claimant was able to dress himself without assistance. Claimant's witness testified that she had to help Claimant into and out of his clothes, and she had to put his compression stockings on him. Department's witness testified that there was no documentation that indicated Claimant required assistance to dress himself.

Walking – The PAS indicated that Claimant was able to walk with assistive devices and assessed him at a level 2. Claimant's witness testified that Claimant has diabetes-related nerve damage and cannot walk. Department's representative testified that in order to receive a deficit for walking, Claimant would require one-person assistance. She testified that the supporting documentation indicated he could walk short distances with the help of his walker.

Administering Medications – The PAS indicated that Claimant was able to administer his medications with prompting and supervision, and assessed him at a level 2. Claimant testified that due to his diabetic retinopathy, he could not read his blood glucose monitor or determine the amount of insulin he was putting in his syringe. Department's representative testified that the Claimant was assessed at a level 2 for administering medications, which indicated he could do this with prompting and/or supervision. She stated that in order to be assessed at a level 3 or higher, he would be unable to deliver a pill from his hand to his mouth. blood glucose monitors were available which voiced the blood glucose readings. She added that the supporting documentation did not indicate Claimant was unable to administer his medications.

6) The Department submitted as evidence supporting documentation that included nursing notes written by [redacted] staff from April 24 to May 4, 2011. (Exhibit D-4.) These notes provide some insight into Claimant's condition at the time of the May 10, 2011 PAS. The notes did not address whether or not Claimant was able to vacate a building in the event of an emergency. They did not indicate that Claimant needed the assistance of staff in order to bathe, groom or dress himself. They did not indicate that he was unable to administer his medication. The notes indicate Claimant used a

wheelchair; however, a nursing note from April 24, 2011, states, "[Claimant is] able to walk short distance with use of walker."

VIII. CONCLUSION OF LAW:

1) Medical eligibility for Long Term Care Medicaid requires a minimum of five deficits from a set of functional life areas. The Department identified and awarded no deficits on the Claimant's May 10, 2011, PAS.

2) Claimant and his witness testified that he should have received deficits in the areas of vacating a building during an emergency, bathing, dressing, grooming, walking and administering medications. However, there was no information on the PAS or in supporting documentation to indicate that any more deficits should have been assessed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposed 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 29th Day of August, 2011.

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Stephen M. Baisden
State Hearing Officer