



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

August 17, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on August 12, 2011. Your hearing request was based on the Department of Health and Human Resources' termination of medical eligibility for Long Term Care Nursing Home admission.

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 Nursing Home admission is based on current policy and regulations. These regulations state that in order to qualify medically for the nursing facility benefits, 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 two deficits and was correct in its determination of your 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 Nursing Home admission based on medical ineligibility.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Amy Workman, Bureau of Medical Services

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

IN RE: -----,

Claimant,

v.

Action Number: 11-BOR-1522

**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 12, 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 August 12, 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 witness

-----, Claimant's witness

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

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

The Hearing Officer via telephone conference call conducted the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was 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 24, 2011
- D-3 Supporting documentation from Nursing Home records

Claimant's Exhibits

None

VII. FINDINGS OF FACT:

- 1) The Claimant is a 56-year old female resident of [REDACTED] Nursing and Rehabilitation located at [REDACTED] West Virginia. Qualified medical staff at the nursing home completed a Pre-Admission Screening (PAS) assessment on May 24, 2011 (D-2) in order to determine whether the Claimant continues to be medical eligibility for nursing facility services. The Claimant's physician has signed the PAS certifying that to the best of his knowledge the Claimant's medical and related needs are essentially as indicate on the PAS.
- 2) The 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) Angela Hobbs is a registered nurse with West Virginia Medical Institute (WVMI). She testified that she reviewed the PAS assessment completed for the Claimant on May 24, 2011, and that she determined from the information that the Claimant established deficits in two areas, *bathing and dressing*. The Claimant will need 3 additional deficits in order to establish medical eligibility for the program.
- 4) The Department issued a Notice of Denial Determination (D-4) to the Claimant on or about June 10, 2011. 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 West Virginia Medical Institute (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 DENIAL: Eligibility for long-term care placement being funded by West Virginia 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; thus your request for long-term care (nursing home) is being denied. The PAS (Pre-Admission Screening Form) reflected deficiencies that meet the severity criteria in two (2) areas identified below.

Bathing
Dressing

- 5) The Claimant testified that she wants to return to her home if there is any way possible; however, she added that her significant other, ----, has told her that he is unable take care of her. She agreed with the PAS findings, but stated that she has some concern in taking her insulin if she returns home because her sight is not good. She added that she is willing to learn to prepare and administer the insulin herself. She testified that she tests her insulin levels without assistance.

- 6) ----- is the Registered Nurse Supervisor at Laurel Nursing and Rehabilitation. She testified that she has reviewed the PAS assessment and compared the assessment with the facility's documentation regarding the Claimant's functional abilities, and that she concurs with the PAS findings. She stated that she is familiar with the policy regarding assessing levels of function during the assessment, and believes it is a fair representation of the Claimant's abilities. -----added that she is concerned with the Claimant potentially returning home as to whether she will be able to administer her own insulin due to her poor eyesight. She added that, in the event that the Claimant returns to her home, steps would be taken by the facility prior to her exit to train her and arrange for her to be provided with specific equipment designed to assist individuals with poor eyesight in administering insulin.
- 7) The Claimant was rated as needing prompting and supervision in order to take her medications and was not assessed a deficit in this area. -----testified that although the Claimant can take her pill type medications with supervision only, staff at the facility administers her insulin shots.
- 8) The Claimant's witness, -----, is the Claimant's friend as has lived in the Claimant's home with her previously. He indicated that he believes the Claimant could not vacate the home in an emergency without physical assistance. He added that she uses a walker, and that she has gained weight since entering the nursing facility, which has caused her to become slower at walking. He further added that she is not coordinated, and that she would need someone to open doors for her when exiting during an emergency.

VIII. CONCLUSION OF LAW:

Medical eligibility for Long Term Care Medicaid requires a minimum of 5 deficits in functional areas. The Department identified and awarded 2 deficits on the Claimant's May 24, 2011, PAS. There was no testimony or evidence sufficient to substantiate findings of 3 additional deficits for the Department. The Claimant testified that she wanted to return home and that she agreed with the PAS findings, and her witnesses could only identify 2 areas which might possibly have been rated incorrectly. 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 18th Day of August, 2011.

**Cheryl Henson
State Hearing Officer**