State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

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

September 16, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 15, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of benefits under the Medicaid Long-Term Care Program.

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.

Medicaid Long-Term Care services are provided to eligible Medicaid individuals who reside in a nursing care or ICF/MR facility. Individuals eligible for coverage under this group must qualify medically. The medical evaluation assessment must establish the existence of a specified number and degree of functional care needs. (West Virginia Medicaid Manual Chapter 514, Section 514.8.2)

Information submitted at the hearing reveals that your condition as of your July 29, 2011 medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify for participation in the Medicaid Long-Term Care Program.

It is the decision of the State Hearing Officer to **uphold** the Agency's determination that you are medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Amy Workman, Bureau for Medical Services
[redacted]

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

IN RE: -----,

Claimant,

vs. **Action Number: 11- BOR- 1704**

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing 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 telephonically on September 15, 2011 on a timely appeal filed August 9, 2011.

II. PROGRAM PURPOSE:

Medicaid Long-Term Care 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 standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

III. PARTICIPANTS:

-----, Claimant
-----, Administrator, [redacted]
-----, Director of Nursing, [redacted]
-----, Social Worker, [redacted]
Kelley Johnson, Program Manager for Long-Term Care, Bureau for Medical Services
Regina Adkins, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Claimant is medically eligible for the Medicaid Long-Term Care Program.

V. APPLICABLE POLICY:

West Virginia Medicaid Manual Chapter 514, Sections 514.8.1 and 514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 West Virginia Medicaid Manual Chapter 514, Sections 514.8.1 and 514.8.2
D-2 Pre-Admission Screening form completed on July 29, 2011
D-3 Denial notice dated August 1, 2011
D-4 Supporting documentation

VII. FINDINGS OF FACT:

1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on July 29, 2011 to determine medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at [redacted] is medically ineligible for the Medicaid Long-Term Care Program.

2) West Virginia Medical Institute (WVMI) Registered Nurse Regina Adkins testified that one (1) qualifying functional deficit – one-person physical assistance with walking – was identified for the Claimant on the PAS assessment.

3) The Claimant was notified of the denial of Long-Term Care services in a letter dated August 1, 2011 (D-3).

4) The Claimant's witnesses voiced agreement with the PAS findings in regard to the Claimant's condition on July 29, 2011. However, they testified that the Claimant's condition has changed since that time and they now believe he meets medical eligibility criteria.

   Kelley Johnson, Program Manager for Long-Term Care, Bureau for Medical Services, informed the Claimant and his representatives that a new PAS could be completed for the Claimant if they believe his condition has deteriorated since July 2011.

5) West Virginia Medicaid Manual Chapter, 514, Section 514.8.2 (D-1) states, in part:

   > 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. 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 Decubitis- 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 The individual has skilled nursing care needs in one or more of these areas: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings or irrigations.

#28 Individual is not capable of administrating his/her own medications.

The assessment tool designated by the Bureau for Medical Services must be completed and signed and dated by a physician. It is then forwarded to the Bureau or its designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility no matter what the payment source for services.

VIII. CONCLUSIONS OF LAW:

1) To qualify medically for the Medicaid Long-Term Care Program, policy specifies that an individual must require direct nursing care twenty-four (24) hours a day, seven (7) days a week. A tool known as the Pre-Admission Screening form is utilized for physician certification of the medical needs of individuals applying for the Medicaid benefit. The PAS is completed and forwarded to the Bureau for Medical Services or its designee (West Virginia Medical Institute) for medical necessity review. Policy holds that to medically qualify for Medicaid Long-Term Care, an individual must have a minimum of five (5) qualifying deficits on the PAS. These deficits are derived from a combination of assessment elements on the medical evaluation.

2) Evidence reveals that a PAS was completed on July 29, 2011 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care Services. The Claimant's PAS revealed that he has one (1) qualifying deficit in the areas of functional limitation.

The Claimant's representatives stated that the July 29, 2011 PAS findings accurately reflect the Claimant's condition on that date. Therefore, no additional deficits can be awarded.

3) The Claimant's total number of functional deficits remains at one (1). Therefore, the required deficits have not been established to meet medical eligibility requirements.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Agency's decision to deny medical eligibility for the Medicaid Long-Term Care Program.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 16th day of September, 2011.

_____

Pamela L. Hinzman
State Hearing Officer

THE CLAIMANT'S RECOURSE TO HEARING DECISION

A. CIRCUIT COURT

An adverse decision of a State Hearing Officer is subject to judicial review through a Writ of Certiorari (West Virginia Code 53-3-1 et seq.) filed in the Circuit Court of Kanawha County within four (4) months from the date of the hearing decision.

The court may determine anew the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision may be appealed to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATES DEPARTMENT OF AGRICULTURE

If the hearing decision involves food stamps and you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.