



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

Earl Ray Tomblin
Governor

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

November 3, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 2, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Long Term Care admission based on a medical ineligibility finding.

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 submitted at the hearing revealed that you should have received four additional deficits, for a total of six, and met medical eligibility for Long Term Care admission.

It is the decision of the State Hearing Officer to **reverse** the Department's denial of Long Term Care admission.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Amy Workman, Department Representative
Jens Wiik, WVMI
[REDACTED] Care and Rehabilitation Center

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1802

**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 November 3, 2011 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 November 2, 2011 on a timely appeal, filed August 18, 2011.

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 representative
-----, Claimant's witness
Kelly Johnson, Department representative
Jens Wiik, RN, West Virginia Medical Institute

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 admission.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 514: Nursing Facility Services; §514.8; §514.8.1; §514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 514: Nursing Facility Services; §514.8; §514.8.1; §514.8.2
- D-2 Pre-Admission Screening (PAS) form dated July 29, 2011
- D-3 Notice of denial dated July 29, 2011
- D-4 Supporting documentation

Claimant's Exhibit:

- C-1 Digital photographs

VII. FINDINGS OF FACT:

- 1) Claimant is an 82-year-old female Long Term Care resident for whom a Pre-Admission Screening (PAS) assessment was completed on July 29, 2011 (Exhibit D-2) to redetermine her medical eligibility for nursing facility services.
- 2) The Department issued a notification (Exhibit D-3) to the Claimant denying Long Term Care admission on or about July 29, 2011. The notice states, in pertinent part:

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-Screen 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 five (5) deficits at the level required; thus your request for long-term care (nursing home) is being denied.

- 3) Jens Wiik, a Registered Nurse with West Virginia Medical Institute (WVMI), testified that the Claimant was awarded deficits in two areas: *bathing* and *medication administration*.
- 4) -----, the Claimant's representative and daughter-in-law, proposed that the Claimant should have been awarded deficits in four additional areas: *grooming*, *dressing*, *eating*, and the ability to *vacate a building in the event of an emergency*.
- 5) -----testified that the Claimant suffers from dementia, is unsteady on her feet, and has to wear orthopedic shoes. She testified that, in the event of an emergency, the Claimant would be mentally unable to *vacate a building* due to her dementia. She indicated that she did not know if the Claimant would be physically able to vacate a building in an emergency because she would have to put on her orthopedic shoes and because she is uncertain that the Claimant could walk steadily enough using a cane.
- 6) -----testified that the Claimant suffers from crippling arthritis in her hands, Carpal tunnel syndrome, and neuropathy. She testified that, regarding *grooming*, this results in the Claimant being unable to shampoo or brush her hair. She testified that the Claimant has limited mobility in her arms and cannot reach above her shoulders. She testified that the Claimant is unable to trim her nails, and that she has foot ulcers that require assistance.
- 7) -----testified, regarding *dressing*, that due to the Claimant's arthritis and Carpal tunnel syndrome, she is unable to fasten, zip, or button clothing. She testified that the Claimant has some "pull-on" clothing, but that she does not have a bra that does not require fastening, and that the Claimant must wear a bra to prevent the accumulation of fungus in the breast area.
- 8) -----testified that the Claimant's limited use of her hands affects *eating* because she is unable to cut her food. She testified that she has witnessed the Claimant stop eating rather than continue to feed herself. She is concerned that the Claimant is not getting the nutrition she needs because she does not receive assistance with eating.
- 9) The Department did not refute any of the additional PAS areas proposed on the Claimant's behalf. There was no rationale offered for deficits awarded or not awarded in testimony. The Department entered supporting documentation (Exhibit D-4) as evidence, but did not cite any areas from this documentation to support their PAS findings, or refer to any specific area of the exhibit at all.

- 10) Kelley Johnson, 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)
 - 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.

VIII. CONCLUSION OF LAW:

- 1) Medical eligibility for Long Term Care admission requires a minimum of five deficits in functional areas. The Department identified and awarded two deficits on the Claimant's July 29, 2011, PAS. The Claimant proposed four additional deficits: *grooming, dressing, eating*, and the ability to *vacate a building in the event of an emergency*. Testimony on the Claimant's behalf was convincing in all proposed areas, and the Department did not offer any rebuttal or cite any section of their supporting documentation to defend their PAS findings. The Department should have awarded four additional deficits to the Claimant, for a total of six, and approved medical eligibility for Long Term Care admission for the Claimant.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of November, 2011.

Todd Thornton
State Hearing Officer