State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

May 9, 2011

-----for -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your mother's hearing held May 4, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny your mother's long term care nursing facility admission based on medical ineligibility from a Level II Pre-Admission Screening desk review.

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 twenty-four 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 which was submitted at your hearing failed to support the presence of the five functional deficits required by policy.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny nursing facility admission based on a Level II Pre-Admission Screening desk review.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kelly Johnston, Program Manager Bureau for Medical Services
Mekell Golden, Psychological Consultation & Assessment, INC.

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

-----,

Claimant,

v. **Action Number: 11-BOR-487**

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 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 May 4, 2011 on a timely appeal, filed October 2, 2010.

It shall be noted that the hearing was originally scheduled for March 9, 2011 in which the Claimant's representative failed to appear. The Claimant's representative provided good cause for her inability to appear and the hearing was rescheduled.

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 and daughter
-----, Claimant's witness and daughter
Kelly Johnston, Program Manager Bureau for Medical Services (BMS)
Rick Workman, Psychological Consultant Bureau for Medical Services (BMS)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to deny the Claimant admission to a long term care nursing facility based upon a Level II Pre-Admission Screening review.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual Chapter 514.8.2 and 514.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Bureau for Medical Services Provider Manual Chapter 514.8.2
D-2 Notice of Denial dated August 10, 2010
D-3 Pre-Admission Screening dated July 23, 2010
D-4 Claimant's Medical History and Physical Examination notes dated July 8, 2010
D-5 Claimant's Medical History and Physical Examination dated July 9, 2010
D-6 Nurses notes dated July 21, 2010 through August 10, 2010

VII. FINDINGS OF FACT:

1) On July 23, 2010, [redacted] Medical Center completed Exhibit D-3, Pre-Admission Screening, hereinafter PAS, as an evaluation of the Claimant's medical eligibility for long-term care nursing facility assistance. The PAS assessment indicates that the Claimant was functionally deficient in the areas of orientation, transferring, walking, wheeling, medication administration, bathing, dressing, and grooming. The assessment also documents the Claimant's current diagnosis as schizophrenic disorder. Based on the documentation listed in the PAS assessment, the Level I review of the Claimant's PAS assessment was approved.

2) Rick Workman, Psychologist Consultant for the Bureau of Medical Services testified that the Claimant's current diagnosis of schizophrenic disorder initiated a Level II PAS review. Mr. Workman stated that a Level II review is required for individuals whose primary diagnosis is a mental illness or if their delays in the required health areas are related to mental illness. The purpose of the review is to ensure that individuals, with a diagnosis of mental illness, are not placed in a nursing facility inappropriately.

3) On August 10, 2010, the Department, specifically Kristen Blanks, M.A./Clinical Consultant for the Bureau of Medical Services, issued Exhibit D-2, Notice of Denial to [redacted] Medical Center informing them of the decision to deny the Claimant's request for nursing facility admission. Exhibit D-2 documents in pertinent part:

> This is to notify you of the denial of the request for nursing facility admission based upon the Level II desk review completed by myself on this date. The denial was based upon the finding indicated below:

> Reason for Denial Decision: The information on the PAS indicates that ----- requires one person assistance (level 3) on item #26 in the areas of transferring and walking and requires situational assistance (level 3) in the area of wheeling; however, the documentation provided does not support these ratings. ----- was admitted to the hospital due to a questionable overdose of Seroquel. She was residing alone in her own home prior to this admission. There does not appear to be any medical reason for the level of assistance she currently requires in the above mentioned area. Also, nursing notes from the past week indicate that when ----- is in the "quiet room" she frequently closes the door and staff must open the door and remind her to keep it open. She also has not requested assistance for using the bathroom "even though she is a fall risk" on numerous occasions. The PAS also indicates that ----- is able to vacate the building in an emergency "with supervision" versus "physical assistance." These factors are not consistent with an individual that would require one person assistance with transferring, walking, and wheeling. Based on these factors, ----- does not have functional deficits in five areas to qualify for nursing home services.

4) Mr. Workman testified that the denial of Claimant's admission into a nursing facility at the Level II PAS review was two-fold. Documentation submitted for review from [redacted] Medical Center (Exhibit D-4, D-5, and D-6) revealed a considerable history of mental illness for the Claimant and failed to support the presence of five functional deficits that were previously identified in the PAS assessment (Exhibit D-3).

5) On July 8, 2010 and July 9, 2010, [redacted] Medical Center completed Exhibit D-4 and Exhibit D-5, Medical History and Physical Examinations of the Claimant. These exhibits document that the Claimant has a history of schizoaffective disorder. Exhibit D-5 further documents that the Claimant has been diagnosed with bipolar subtype, chronic with acute exacerbation, history of diagnosis of personality disorder not otherwise specified, chronic mental illness, poor coping skills, and limited social support system.

6) Mr. Workman identified four areas in which the documentation available for review did not support the existence of substantial deficits. Those areas include orientation, transferring, walking, and wheeling.

Orientation-The PAS assessment (Exhibit D-3) completed by the physician documented that the Claimant was assessed as a Level 3, Totally Disoriented. Documentation submitted for the Level II PAS review (Exhibit D-4 and Exhibit D-5), did not support the presence of a deficit in the area of orientation. Exhibit D-4 documents that the Claimant was, "Alert and oriented x3, person, place, time and date. Normal memory, normal affects." Mr. Workman testified that there was no indication of a physical, nursing, or medical reason in the documentation for nursing facility level of care. Exhibit D-5 documents a Mental Status Exam of the Claimant which notes that the Claimant's thought process "is fairly organized, although occasionally loose" and that "patient was alert, oriented x4."

Transferring, Walking, and Wheeling-The PAS assessment (Exhibit D-3) documents that the Claimant was assessed as requiring one person assistance (Level III) in the area of transferring, walking, and situational assistance (Level III) in the area of wheeling. Mr. Workman presented

Exhibit D-6 Nurse's notes from July 21, 2010 through August 10, 2010, which did not support the presence of a functional deficit in those areas. Exhibit D-6 documents in pertinent part:

> 8/10/10-on fall risk precautions but does not ask staff for assistance to bathroom
> 8/09/10-took a quick shower with help, changed her bed and has been in and out of bed, asked for clean sheets and changed her bed
> 8/07/10-pt [patient] in and out of quiet room. Pt closing door to quiet room-staff keeps opening door and reminding that the door needs to be open if she want [sic] to be in the room to feel safe. Pt listens at time yet then [sic] closes door. Staff continue to open door and remind patient to keep door open door is open at this time.
> 7/28/10-pt did not inform [sic] when using bathroom today
> 7/27/10-refused assistance to the restroom
> 7/22/10-cooperative with medications-isolative to room-did not request assistance to bathroom

Mr. Workman stated that the documentation did not identify the Claimant's use of a wheelchair and did not reflect that the Claimant required assistance when transferring and walking.

7) -----, Claimant's witness and daughter testified that her mother had been hospitalized on numerous occasions and previously attempted suicide. ----- indicated that at the time her mother was hospitalized in July, 2010, she suffered from multiple physical problems including an inability to walk, incontinence, and disorientation. ----- stated that psychiatrists indicated that the Claimant was unable to take care of herself; however, she was released from [redacted] Medical Center because they could no longer provide her with services. ----- stated that her mother attempted suicide on two different occasions while residing in a psychiatric unit. ----- indicated that while her mother was hospitalized at [redacted] Medical Center, her room was close to the nursing station and that she could ambulate to the quiet room because it was six feet from her room. ----- stated that her mother is capable of walking short distances with the aid of a walker, but requires assistance to walk longer distances. At the time of hospitalization, ----- indicated that her mother experienced episodes of incontinence. ----- stated her mother's disorientation has not improved since the hospitalization.

8) -----, the Claimant's representative and daughter stated that her mother was initially hospitalized in January, 2010 and she spent the majority of her time in bed with occasional trips to the quiet room. -----indicated that her mother was being assisted by nursing facility upon her release from [redacted] Medical Center and that notes from the nursing facility indicated that her mother required assistance in walking, feeding, and bathing. ----- stated that medical notes from [redacted] Medical Center and the nursing facility are different as they relate to her mother's abilities. The Claimant has since been released from the nursing facility and now resides in a personal care home.

9) Bureau for Medical Services Provider Manual Chapter 514.8.2 documents:

> 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: 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 person 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 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.

10) Bureau for Medical Services Provider Manual Chapter 514.9 documents:

Pre-admission screening for medical necessity of nursing facility services is a two step process. The first step (Level I) identifies the medical need for NF services and screens for the possible presence of a major mental illness, mental retardation, and/or developmental disability. The second step (Level II) identifies if the individual needs specialized services for a major mental illness, mental retardation, and/or developmental disability.

11) Bureau for Medical Services Provider Manual Chapter 514.9.1 documents:

All individuals admitted to a Medicaid certified nursing facility must be assessed for the possible presence of a major mental illness, mental retardation and/or a developmental disability (MI/MR/DD). The same preadmission screening tool utilized to assess the medical necessity for the Medicaid benefit in a NF is reviewed for the possible presence of MI/MR/DD. This review is identified as the Level I evaluation. Any individual identified with the possible presence of mental health issues must be further evaluated.

12) Bureau for Medical Services Provider Manual Chapter 514.9.2 documents:

> If the Level I evaluation found the possible presence of MI and/or MR/DD, further evaluation of the individual must be completed to obtain a definitive diagnosis and the need for specialized services for the mental health condition. This evaluation is identified as a Level II evaluation and must be done by an individual identified by the Bureau as a Level II evaluator. All Level II evaluators are either licensed psychologists or board certified psychiatrists. It is the responsibility of the referring entity to arrange for an evaluation (Level II). This evaluation must be completed, including a report of the mental health status and whether specialized services are needed, within 7-9 days following the referral and prior to the individual's admission into a nursing facility. Upon completion of the evaluation, both the referring entity and the PASRR evaluator must provide the complete mental health evaluation and the original Level I evaluation to the receiving nursing facility. Additionally, the results of the evaluation should be sent to BMS on the applicable forms. The Code of Federal Regulations at 42 CFR 483.106 states ―In cases of transfer of a resident with MI or MR from a NF to a Hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASRR Level II and resident reports accompany the transferring resident.‖ This regulation applies to all residents of nursing facilities. Repeat Level II evaluations are only necessary if there is an acute exacerbation of the mental illness or if the physical condition of the individual with MR/DD improves or declines, thus changing the need for specialized services. The nursing facility must complete the Level I evaluation tool indicating the status change and request the Level II evaluation by an evaluator.

VIII. CONCLUSIONS OF LAW:

1) Policy stipulates that the Pre-Admission Screening (PAS) of medical necessity for nursing facility services is a two step process, involving Level I and Level II PAS reviews. The Level I review identifies the medical need for nursing facility and screens the individual for the presence of mental illness, while the Level II review identifies if the individual will require specialized services for a major mental illness. Additionally, policy dictates that in order to qualify medically for nursing facility benefits, an individual must need direct nursing care twenty-four hours a day, seven days a week and an individual must have a minimum of five (5) deficits identified on the PAS, in order to qualify medically for the Medicaid nursing facility benefit.

2) The July 23, 2010 PAS assessment of the Claimant indicated that the Claimant met the medical need for nursing facility care because she was functionally deficient in eight of the required health areas.

3) The July 23, 2010 PAS assessment documented the presence of a mental illness, specifically schizophrenic disorder. Policy requires a Level II PAS review be completed by a psychologist or board certified psychiatrist in order to determine a definite diagnosis and the need for specialized services of the mental health condition.

4) Documentation submitted for the Level II PAS review revealed a history of mental illness but failed to support the presence of the required five functional deficits. The documentation failed to support the PAS assessment findings that the Claimant was functionally deficient in the areas of orientation, walking, transferring, and wheeling, thus reducing the awarded functional deficits to four.

5) Policy requires that a functional deficit is awarded in the area of orientation when the individual is assessed at a Level 3 or higher, meaning that the individual is totally disoriented or comatose. As evidenced by the physical examination and mental status examinations completed by [redacted] Medical Center, the Claimant was oriented to person, place, time, and date with a thought process that was fairly organized. The Claimant's initial PAS assessment documented a rating of Level 3, Total Orientation; however, documentation submitted for the Level II PAS review fails to support this finding and a functional deficit in the area cannot be awarded.

6) Policy requires that a functional deficit is awarded in the areas of walking and transferring when the individual is assessed as a Level 3 or higher, meaning that the individual requires one or two person assistance. The Claimant's PAS assessment documented a rating of Level 3 requiring one person assistance in each of the contested life areas; however, supporting documentation submitted for the Level II PAS review fails to support the finding. As evidenced by the nurse's notes completed by [redacted] Medical Center, the Claimant, who is a fall risk, refused assistance and independently ambulated to the restroom and quiet room on multiple occasions during her hospitalization. The Claimant's abilities are not consistent with an individual who requires assistance to ambulate or transfer; therefore, a functional deficit in each of the life areas is not warranted.

7) Policy requires that a functional deficit is awarded in the area of wheeling when the individual is assessed as a Level 3 or higher, requiring physical assistance. Documentation submitted for review failed to indicate that the Claimant required the use of a wheelchair and that she independently ambulated on her own, on multiple occasions. There was no evidence to support the finding that the Claimant required the use of a wheelchair device; therefore, the finding of a Level 3 assessment in the area is not warranted.

8) Documentation failed to support the presence of five functional deficits; therefore, the Department was correct in its decision to deny the Claimant's admission for long-term care nursing facility care based on a Level II PAS review.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to deny that Claimant's admission to a long-term care nursing facility based on Level II PAS review.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of May, 2011.

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Eric L. Phillips
State Hearing Officer