



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

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

February 24, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 31, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Long Term Care services.

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.

Eligibility for the Long Term Care Medicaid program is based on current policy and regulations. These regulations provide that to qualify medically, the individual must need direct nursing care twenty-four (24) hours a day, seven (7) days a week. The Pre-Admission Screening form is utilized to determine medical necessity of Long Term Care. An individual must receive a minimum of five (5) deficits on the Pre-Admission Screening to qualify (Nursing Facility Services § 514.8.2).

The information submitted at your hearing revealed that you no longer meet the medical criteria required to continue receiving Long Term Care services.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to terminate your Long Term Care Medicaid.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Medical Services

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

IN RE: -----,

Claimant

v.

ACTION NO.: 11-BOR-2631

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 31, 2012 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 a timely appeal, filed December 14, 2011.

It should be noted here that the Claimant's benefits under the Long Term Care Medicaid program have continued pending a decision.

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
- , Associate Administrator, [REDACTED] Healthcare Center
- , Social Worker, [REDACTED] Healthcare Center
- , RN, [REDACTED] Healthcare Center

Kelly Johnson, Bureau of Medical Services (testified by phone)
Cathy Montalli, RN, West Virginia Medical Institute (testified by phone)

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

This hearing was held by videoconference.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to terminate Claimant's Long Term Care Medicaid is correct.

V. APPLICABLE POLICY:

Nursing Facility Manual § 514.8.1 and 514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Nursing Facility Manual § 514.8.1 and 514.8.2
- D-2 Pre-Admission Screening dated December 5, 2011
- D-3 Termination Letter dated December 6, 2011
- D-4 Nursing Progress Notes, Physician Determination of Capacity and Resident Assessment and Care Screening

VII. FINDINGS OF FACT:

- 1) Claimant was admitted to [REDACTED] Healthcare Center in October 2011. A Pre-Admission Screening (PAS) was completed on December 5, 2011 to reevaluate Claimant's medical eligibility for Long Term Care services based on her improvement while residing at the facility (D-2).

Claimant was awarded deficits in the areas of bathing and continence. Three (3) additional deficits were required for Claimant to continue receiving Long Term Care Medicaid.

- 2) Claimant testified she agreed with the PAS, however she felt she could still benefit from continuing her care at the facility. Claimant stated the staff provides her with compassion, strength, love and friendship. Claimant stated she is afraid to live on her own and did not feel as though she was capable of being on her own.

3) -----, Social Worker with [REDACTED] Healthcare Center, testified Claimant has nowhere to go if she is discharged from the facility. ----- admitted Claimant has shown improvement during her time at the facility.

4) 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 administering 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 Long Term Care Medicaid, 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. 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) Claimant received two (2) deficits as a result of a PAS completed in December 2011. Claimant did not contest the PAS nor was any evidence or testimony presented to contradict the findings of the PAS.
- 3) Claimant no longer meets the medical criteria required to continue receiving Long Term Care Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate Claimant's Long Term Care Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th day of February 2012

**Kristi Logan
State Hearing Officer**