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

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 10, 2012

Dear ------:

Attached is a copy of the Findings of Fact and Conclusions of Law on the hearing held August 8, 2012, for ------. Your hearing request was based on the Department of Health and Human Resources' termination of ------'s 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 ------'s condition, as of her May 2012 medical evaluation, required a sufficient level of care (five functional deficits) to medically qualify her for participation in the Medicaid Long-Term Care Program.

It is the decision of the State Hearing Officer to **reverse** the Agency's determination that ------ is 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
Social Worker, ERCC
Stacy Broce, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

IN RE: ------,

Claimant,

vs. **ACTION NO.: 12-BOR-1588**

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 on August 8, 2012, on a timely appeal filed June 6, 2012.

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's son/Attorney-in-Fact
Kelley Johnson, Program Manager for Long-Term Care, Bureau for Medical Services (participated telephonically)
Stephanie Schiefer, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. 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, Section 514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Pre-Admission Screening form completed on May 18, 2012
D-2 Notice of Denial Determination dated May 21, 2012
D-3 Physician's Determination of Capacity dated October 27, 2011
D-4 Medical Power of Attorney documents dated November 4, 1994
D-5 Medical documentation
D-6 West Virginia Medicaid Manual Chapter 514, Section 514.8.2

Claimant's Exhibits:

C-1 Letter from ------, D.O., dated July 25, 2012
C-2 Statements from ------, M.D., dated August 11, 2003, and December 30, 2003
C-3 Physician's Orders, Resident Diagnosis Listing, Nursing Progress Notes, prescription information, and Consultation Report and/or Physician Referral

VII. FINDINGS OF FACT:

1) A Pre-Admission Screening (PAS) medical evaluation (D-1) was completed for the Claimant on May 18, 2012, to determine continued medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at ------ Rehabilitation and Care Center [redacted], is medically ineligible for the Medicaid Long-Term Care Program.

2) West Virginia Medical Institute (WVMI) Nurse Reviewer Stephanie Schiefer testified that four (4) qualifying functional deficits were identified for the Claimant as a result of the PAS assessment completed by ------, M.D. The Claimant, age --, received deficits in the areas of total care with bathing, dressing and grooming, and inability to administer medication.

3) The Claimant was notified of the denial of Long-Term Care services in a letter dated May 21, 2012 (D-2).

4) ------, the Claimant's son/Attorney-in-Fact, testified that his mother's heart is weak and her extremities turn black when she is up for long periods of time. The Claimant, who has a diagnosis of senile dementia, interacts better during the day, but becomes more confused during the night hours. ------ testified that his mother's ability to vacate in the event of an

emergency would depend on her blood pressure, the level of dizziness she is experiencing, and the condition of her extremities on any given day. ------ testified that the Claimant cannot be trusted in a home setting and almost set his residence on fire – prior to her admission to the long-term care facility - when she turned on his stove and attempted to cook. He indicated that his mother did not appear to react to the fire. ------ stated that the Claimant's ability to vacate the building in the event of an emergency would depend on her state on that particular day, as her condition changes frequently.

------ provided a letter from ------, D.O., who previously served as the Claimant's primary care physician. In the letter, ------ stated that the Claimant has "profound sundowning," and becomes confused and combative at night.

Medical documentation provided by the Department (D-5) includes a Minimum Data Set from ERCC dated April 23, 2012, and indicates that the Claimant has diagnoses of heart failure, high blood pressure and non-Alzheimer's dementia. It should be noted that the Claimant was rated as requiring supervision to vacate in the event of an emergency on the PAS.

------ also provided Exhibit C-3, which indicates that the Claimant has had an abrasion on her left armpit. The WVMI Nurse indicated that the abrasion may not be considered a decubitis, as decubitis ulcers not normally appear on that area of the body.

5) West Virginia Medicaid Manual Chapter, 514, Section 514.8.2 (D-6) 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 May 18, 2012, and it was determined that the Claimant was medically ineligible for Medicaid Long-Term Care Services. The Claimant's PAS revealed that she has four (4) qualifying deficits in areas of functional limitation.

   Based on information provided during the hearing, the Claimant is awarded one (1) additional deficit for mental/physical inability to vacate the building in the event of an emergency. Based on the Claimant's dementia diagnosis, reported confusion and physician-

documented “sundowning,” it is reasonable to believe that she would become disoriented and require physical assistance to vacate in the event of an emergency, particularly during the night-time hours. In addition, documentation reveals that the Claimant suffers from heart failure, and her son indicated that the condition affects her ability to use her extremities. Therefore, her physical ability to vacate without physical assistance in the event of an emergency is also called into question.

3) The Claimant’s total number of functional deficits is elevated to five (5). Therefore, the required deficits have been established to meet medical eligibility requirements.

IX. DECISION:

It is the ruling of the State Hearing Officer to **reverse** the Agency’s decision to terminate benefits under 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 10th day of August, 2012.

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Pamela L. Hinzman
State Hearing Officer