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

April 13, 2012

---- ---- ---- ----

Dear ---- ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the hearing held April 11, 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 February 2012 medical evaluation did not require 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 **uphold** 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
Alva Page III, Esq., Bureau for Medical Services
Brenda Alvarado, Ombudsman, Legal Aid of West Virginia

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

IN RE: ---- ----,

Claimant,

vs. **Action Number: 12-BOR-806**

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 April 11, 2012 on a timely appeal filed February 27, 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
---- ---- , Claimant's Aunt/Healthcare Surrogate
---- ----, Social Worker, [redacted] Nursing Home
---- ----, M.D., Claimant's Physician
Brenda Alvarado Ombudsman, Legal Aid of West Virginia
Kelley Johnson, Program Manager for Long-Term Care, Bureau for Medical Services
Barbara Green Nurse Reviewer, 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 Section 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 February 9, 2012
D-3 Denial notice dated February 10, 2012
D-4 Supporting documentation

Claimant's Exhibits:
C-1 Letter from ---- ----, M.D., dated April 4, 2012

VII. FINDINGS OF FACT:

1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on February 9, 2012 to determine continued medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at [redacted] Nursing Home, is medically ineligible for the Medicaid Long-Term Care Program.

2) West Virginia Medical Institute (WVMI) Nurse Reviewer Barbara Green testified that three (3) qualifying functional deficits were identified for the Claimant as a result of the PAS assessment completed by ---- ----, M.D. The Claimant, age 49, received deficits for physical inability to vacate the building in the event of an emergency, physical assistance with bathing, and inability to administer medication.

3) The Claimant was notified of the denial of Long-Term Care services in a letter dated February 10, 2012 (D-3).

4) ---- ----, M.D., who testified on behalf of the Claimant, indicated that the Claimant has been diagnosed with multiple sclerosis and the disease is progressing rapidly. ---- ----stated that the Claimant can feed herself, but may require physical assistance with dressing, and would

require prompting and possible physical assistance with grooming. He indicated that the Claimant has difficulty with coordination and staying on task, and that her gait has worsened. The physician testified that the Claimant would likely be able to stay alone at night, but would probably require a medical alert system by day.
Brenda Alvarado, Ombudsman with Legal Aid of West Virginia, contended that the Claimant should receive additional deficits in the areas of physical assistance with dressing and grooming. Ms. Alvarado indicated that the Claimant does not shave her own legs or clip her nails.

The Claimant testified that she may be able to shave her legs unassisted, however, she has reportedly been given men's razors at the facility and cannot use them. She indicated that a nursing home staff member has clipped her toenails. The Claimant stated that she has required help with dressing at times, but can put on bras if they fit appropriately. She testified that she turns her bras around to her front to hook them and also wears bras that slip over her head. The Claimant stated that she has mobility difficulties on her right side and has had frequent falls.

Kelley Johnson, Program Manager for Long-Term Care with the Bureau for Medical Services, stated that a Minimum Data Set (D-4) completed by the nursing home in January 2012, reveals that the Claimant was marked independent in completing personal hygiene tasks, including shaving. In addition, Activities of Daily Living reports for January-February 2012 (D-4) indicate that the Claimant dressed and groomed independently at that time. Ms. Alvarado contended that those completing the forms may not routinely consider nail clipping and leg shaving when assessing the Claimant's ability to groom. ---- ----, Social Worker at Nella's Nursing Home, stated she has been informed that staff assists the Claimant with shaving her legs and clipping her nails.

Exhibit C-1, a letter from ---- ----, M.D., dated April 4, 2012, was submitted on behalf of the Claimant. This letter indicates that the Claimant exercises poor judgment, becomes confused, and has difficulty with grooming and dressing. ---- ---- opined that the Claimant is incapable of taking care of herself.

Ms. Johnson testified that the Claimant can have a new PAS completed at any time if her condition has deteriorated.

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 February 9, 2012 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care Services. The Claimant's PAS revealed that she has three (3) qualifying deficits in areas of functional limitation.

   The Claimant's representatives contended that she requires physical assistance with grooming and dressing, however, the PAS completed by the Claimant's physician in February 2012 indicates that she could dress and groom independently, and Minimum Data Set/Activities of Daily Living reports state that the Claimant was dressing and grooming independently at the facility during that time period.

3) The Claimant's total number of functional deficits remains at three (3). 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 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 13th day of April, 2012.

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Pamela L. Hinzman
State Hearing Officer