



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
4190 Washington Street, West  
Charleston, West Virginia 25313

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

April 8, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1523

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Donna L. Toler  
State Hearing Officer  
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Stacy Broce, Bureau for Medical Services  
[REDACTED], [REDACTED]

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

██████████,

**Claimant,**

v.

**Action Number: 15-BOR-1523**

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

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 8, 2015, on an appeal filed March 11, 2015.

The matter before the Hearing Officer arises from the February 6, 2015 decision by the Respondent to deny the Claimant's application for Medicaid Long-Term Care (Nursing Home) benefits.

At the hearing, the Respondent appeared by Kelley Johnson, Program Manager, Bureau for Medical Services. The Claimant appeared by his representative and niece, ██████████. Appearing as a witness for the Claimant was ██████████, the Claimant's sister. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Policy Manual, Chapter 514 - Covered Services, Limitations and Exclusions for Nursing Facility Services
- D-2 Pre-Admission Screening (PAS) form dated February 2, 2015
- D-3 Notice of Denial for Long-Term Care (Nursing Home) dated February 6, 2014
- D-4 Physician Determination of Capacity
- D-5 Assisted Daily Living (ADL) Record, ██████████
- D-6 ██████████ Progress Notes
- D-7 Minimum Data Set (MDS) Resident Assessment and Care Screening

**Claimant's Exhibits:**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

### FINDINGS OF FACT

- 1) On February 2, 2015, the Claimant was evaluated to determine continued medical eligibility for participation in the Medicaid Long-Term Care (Nursing Home) Program. The Pre-Admission Screening (PAS) form was signed by [REDACTED], MD, and identified three (3) functional deficits – Medication Administration, Bathing and Vacating in the Event of an Emergency. (Exhibits D-2 and D-3)
- 2) On or about February 6, 2015, the Respondent issued notice to the Claimant of its decision to terminate Medicaid Long-Term Care (Nursing Home) Program benefits as a result of the determination that he did not meet medical criteria for the program. As a matter of record, the Respondent stipulated that the Claimant demonstrated three (3) functional deficits (Medication Administration, Bathing and Vacating in the Event of an Emergency) at the time of the assessment, but because a minimum of five (5) deficits must be identified, continued medical eligibility could not be established. (Exhibit D-3)
- 3) The Claimant's witness contended that functional deficits should have been awarded in the areas of Grooming, Dressing and Hearing.
- 4) The following will address the findings specific to each of the contested functional areas:

**Grooming** – In order to qualify for a functional deficit in grooming, the individual must require, at a minimum, physical assistance. The Claimant was identified on the PAS as a level 1 (self/prompting). The Claimant's representative argued that the Claimant needs assistance with grooming. She testified that the Claimant is unable to trim his fingernails and toenails himself. The Claimant's representative testified that the family and the nursing home staff has been trimming his nails for him while in the nursing home. She added that the Claimant was unable to trim his toenails prior to his admission in the nursing home as well. The Department's representative pointed out that documentation kept by facility staff, which included the Minimum Data Set (MDS), the Assisted Daily Living (ADL) Flow Sheet Log, and Progress Notes revealed the Claimant was independent in the functional area of grooming when the PAS assessment was completed, but that the logs did not specifically address the trimming of the Claimant's nails. She added that if the Claimant required assistance in trimming his nails it would be considered a deficit in the area of grooming. (Exhibit D-5 through D-7)

**Dressing** – Policy stipulates that an individual must require physical assistance to qualify for a functional deficit in the area of dressing. The Claimant's representative contended that the Claimant is unable to button and unbutton his clothing without hands-on, physical assistance. She testified that if someone did not button his clothing for him, it

would remain unbuttoned. The Claimant's representative added that family members buttoned the Claimant's clothing for him while they were at the nursing home facility. The Department's representative pointed out that documentation kept by facility staff, which included the Minimum Data Set (MDS), the Assisted Daily Living (ADL) Flow Sheet Log, and Progress Notes revealed the Claimant was independent in the functional area of dressing when the PAS assessment was completed, but that the logs were not very specific. The Department's representative stated that if the Claimant was unable to button and unbutton his clothing without assistance it would be considered a functional deficit in the area of dressing. (Exhibits D-5 through D-7)

**Hearing** – The Claimant's representative testified that the Claimant is almost completely deaf. She reported that everything has to either be written down in simple terms or repeated several times before the Claimant acknowledges understanding. The Department's representative stated that hearing is not a functional area which can be awarded a deficit for the Medicaid Long-Term Care (Nursing Home) Program and referred to policy contained in the Bureau for Medical Services policy manual §514.6.3 (Exhibit D-1). The Department's representative added that the Claimant's hearing impairment could be considered when determining if the Claimant had a deficit in the area of Ability to Vacate in the Event of an Emergency, adding that the Claimant had already been awarded a deficit in that area. (Exhibits D-1 and D-3)

### **APPLICABLE POLICY**

According to the West Virginia Bureau for Medical Services Medicaid Provider Manual §514.6.3, to qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, 7 days a week. BMS has designated a tool known as the Pre-Admission Screening form (PAS) (see appendix II) 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 deficits identified on the PAS. These deficits will be determined based on the review by BMS/designee 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 the 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)  
Continenence: 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.  
Department of Health and Human Resources Chapter 514: Nursing Facility Services Page 30 January 1, 2013  
DISCLAIMER: This manual does not address all the complexities of Medicaid policies and procedures, and must be supplemented with all State and Federal Laws and Regulations.

- #27: Individual has skilled needs in one 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.

This assessment tool must be completed, signed and dated by a physician. The physician's signature indicates "to the best of my knowledge, the patient's medical and related needs are essentially as indicated". It is then forwarded to the Bureau or their designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility, regardless of the payment source for services.

## **DISCUSSION**

The Claimant's representative contended a deficit should have been awarded in the area of hearing due to the Claimant being deaf. However, hearing is not included on the list of identified deficits contained in policy.

Regulations that govern the Medicaid Long-Term Care (Nursing Home) Program stipulate that an individual must require hands-on physical assistance in the functional areas of dressing and grooming to qualify for a functional deficit. Credible testimony provided by the Claimant's representative established that the Claimant required hands-on physical assistance with dressing and grooming at the time the PAS was conducted. Deficits should have been awarded in the two (2) functional areas of dressing and grooming.

## **CONCLUSIONS OF LAW**

The Claimant demonstrated three (3) functional deficits (Medication Administration, Bathing and Vacating in the Event of an Emergency) on the date of the assessment. As a result of information provided during the hearing – two (2) additional deficits are identified in the

functional areas of grooming and dressing. Whereas five (5) deficits have been identified, medical eligibility for the Medicaid Long-Term Care (Nursing Home) Program is established.

**DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision to deny the Claimant's application for benefits and services provided through the Medicaid Long-Term Care (Nursing Home) Program.

**ENTERED this \_\_\_\_ Day of April 2015.**

---

**Donna L. Toler**  
**State Hearing Officer**