



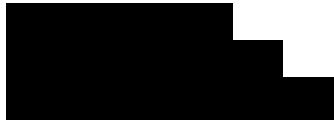
STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

BOARD OF REVIEW
9083 Middletown Mall
White Hall, WV 26554

Karen L. Bowling
Cabinet Secretary

January 20, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 14-BOR-3728

Dear Mr. [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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Kelley Johnson, BMS

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

██████████,

Claimant,

v.

Action Number: 14-BOR-3728

**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 January 13, 2015, on an appeal filed November 24, 2014.

The matter before the Hearing Officer arises from the November 19, 2014 decision by the Respondent to terminate the Claimant's Medicaid Long-Term Care benefits.

At the hearing, the Respondent appeared by Kelley Johnson, Bureau for Medical Services. The Claimant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Claimant's Request for Hearing received on 11/24/14 (Pages 1-6)
- D-2 Pre-Admission Screening (PAS) form completed on 11/13/14 (Pages 7-13)
- D-3 Documentation submitted from facility/physician (Pages 14-68)
- D-4 Notice of Denial for Long-Term Care (Nursing Home) dated 11/19/14 (Page 69)

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 November 13, 2014, Claimant was evaluated to determine medical eligibility for continued participation in the Medicaid Long-Term Care Program. The Pre-Admission Screening (PAS) form (D-2) was signed by [REDACTED], MD, and identified one (1) functional deficit – Grooming.
- 2) On or about November 19, 2014, Respondent issued notice (D-4) to Claimant of its decision to terminate Medicaid Long-Term Care Program benefits as a result of the determination that he did not meet medical criteria for the program. As a matter of record, Respondent stipulated that the Claimant demonstrated one (1) functional deficit (grooming) at the time of the assessment, but because a minimum of five (5) deficits must be identified, continued medical eligibility could not be established.
- 3) Claimant contended that he remains eligible for Medicaid payment of nursing facility care because he is demonstrating functional deficits in the areas of bathing, dressing, walking, wheeling and vacating (in the event of an emergency). The Claimant proffered testimony to indicate that he had a lower right leg amputation in May 2014 and that these deficits exist because he is not yet proficient with his prosthetic leg. The Claimant further alleged that conflict between him and the facility has prompted the facility to determine he does not require medical services.
- 4) The following will address the findings specific to each of the contested functional areas:

Bathing – In order to qualify for a functional deficit in bathing, the individual must require, at a minimum, one (1)-person physical assistance. The Claimant was identified on the PAS (D-2) as a level 1(self/prompting) by his treating physician. The Claimant argued, however, that he receives assistance with bathing, but did not elaborate on the extent of assistance provided by facility staff. A review of the documentation kept by facility staff, which includes the Minimum Data Set (MDS), found in Exhibit D-3 (page 31), and the ADL Flow Sheet Log (Pages 61- 65), reveals the Claimant was independent in the functional area of bathing when the PAS assessment was completed. The evidence does not identify a functional deficit in the area of bathing.

Dressing – Policy stipulates that an individual must require physical assistance from at least one (1) person to qualify for a functional deficit in the area of dressing. The Claimant contended that while he can dress himself, it can be pretty difficult and time consuming. As a result, the Claimant reported that he has had facility staff and friends provide him assistance with getting dressed. A review of Exhibit D-3 (MDS page 31 and ADL Flow Chart pages 61-65) reveals that the only level of assistance provided by facility staff has been supervision. This information, considered in conjunction with the Claimant’s testimony indicating he can dress himself, confirms the Claimant is not demonstrating a functional deficit in dressing.

Vacating – The Claimant expressed concern about his ability to vacate the facility in the event of an emergency because he is not proficient at putting on his prosthetic leg. The Claimant went on to indicate that his walking and wheeling were correctly assessed at a level 2 (walking - supervised/assistive device, and wheeling - independent), because he is unsteady. This finding, along with a level 1 (independent) assessment of his ability to transfer, clearly demonstrates that the Claimant does not require physical assistance, as required by policy, to vacate the building in the event of an emergency. As a result, the Claimant is not demonstrating a functional deficit in vacating.

Walking & Wheeling – As a matter of record, the Claimant agreed that walking and wheeling were correctly assessed, although he contended that when considered together, he is demonstrating a deficit in his ambulation. While it is clear that the Claimant’s lower right leg amputation has required changes in his ability to ambulate, there is no evidence to indicate he requires physical assistance to walk, and according to policy, a deficit cannot be established in wheeling unless walking is rated a level 3 (requires 1-person physical assistance) or higher. Based on the evidence, the Claimant is not demonstrating a deficit in walking or wheeling.

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)

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.
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

Regulations that govern the Medicaid Long-Term Care (Nursing Facility) Program stipulate that an individual must require hands-on physical assistance in the functional areas of bathing, dressing, walking, wheeling and vacating (in the event of an emergency) to qualify for a functional deficit. While the evidence submitted at the hearing reveals the Claimant's lower right leg amputation causes him additional challenges, there is no evidence to indicate he requires hands-on physical assistance with any of the contested activities of daily living.

CONCLUSIONS OF LAW

The Claimant demonstrated one (1) functional deficit (grooming) on the date of the assessment and – as a result of information provided during the hearing – no additional deficits were identified. Because five (5) deficits have not been identified, medical eligibility for the Medicaid Long-Term Care Program cannot be established.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's decision to terminate the Claimant's benefits and services provided through the Medicaid Long-Term Care Program.

ENTERED this ____ Day of January 2015.

**Thomas E. Arnett
State Hearing Officer**