



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

April 10, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 14-BOR-3802

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Kelley Johnson, Department Representative

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

██████████,

**Claimant,**

v.

**Action Number: 14-BOR-3802**

**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 22, 2015, on an appeal filed December 2, 2014.

The matter before the Hearing Officer arises from the October 1, 2014 decision by the Respondent to deny medical eligibility for Long Term Care Medicaid.

At the hearing, the Respondent appeared by Kelley Johnson. Appearing as a witness for the Department was ██████████. The Claimant appeared *pro se*. Appearing as witnesses for the Claimant were ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual, Chapter 514: Covered Services, Limitations, and Exclusions, for Nursing Facility Services, §514.6.3
- D-2 Pre-Admission Screening (PAS) form, dated September 30, 2014
- D-3 Physician's Determination of Capacity, dated May 5, 2012
- D-4 Notice of decision, dated October 1, 2014
- D-5 Minimum Data Set (MDS) documents, dated September 10, 2014

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) The Claimant was an applicant for Long Term Care (LTC) Medicaid, or Nursing Facility Services.
- 2) The Claimant's medical eligibility for LTC Medicaid was assessed and documented on a September 30, 2014 Pre-Admission Screening (PAS) document (Exhibit D-2).
- 3) The Respondent contracts with West Virginia Medical Institute (WVMI) to make the medical eligibility determinations of LTC Medicaid applicants. [REDACTED], a Registered Nurse employed by WVMI, reviewed the Claimant's PAS and determined there were no deficits in the health areas considered for medical eligibility for the program.
- 4) The Respondent issued the Claimant a notice of denial (Exhibit D-4) on October 1, 2014. This notice explained that the reason for the denial was the requirement for "five (5) areas of care needs (deficits) that meet the severity criteria," and indicated the Claimant's PAS "reflected deficiencies that meet the severity criteria in [zero] areas..."
- 5) The Claimant proposed that four additional health areas – *eating*, *bathing*, *grooming*, and *decubitus* – should have been awarded in the Respondent's assessment.
- 6) The Claimant testified she cannot chew up foods well with regard to the health area of *eating*. The Minimum Data Set (MDS) documentation presented by the Respondent (Exhibit D-5) includes a daily record of the Claimant's ability to perform activities of daily living in the nursing home where she resides. The Claimant was noted to eat independently on this documentation.
- 7) The Claimant testified "I try" with regard to the health area of *bathing*. The MDS documentation noted the Claimant was able to bathe independently (Exhibit D-5).
- 8) The Claimant testified she needs help with regard to the health area of *grooming*. The MDS documentation noted the Claimant performs grooming tasks independently (Exhibit D-5, "Personal Hygiene" corresponds with the *grooming* health area).
- 9) The Claimant testified that she has "weeping" or "bleeding" sores. However, the sores in question are diabetic sores, and not *decubitus*, or bed sores.

## APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, Chapter 514: Covered Services, Limitations, and Exclusions, for Nursing Facility Services, §514.6.3, details the medical eligibility determination process for LTC Medicaid, or Nursing Facility Services, as follows:

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: 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.
- #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.

### **DISCUSSION**

The Claimant has appealed the Respondent's decision to deny her application for LTC Medicaid, or Nursing Facility Services, based on insufficient deficits to establish medical eligibility.

The Respondent assessed the Claimant as having no deficits. Policy requires five deficits. The Claimant proposed four additional deficits. If awarded, the Claimant would still not establish medical eligibility for the program.

Evidence generated from a daily observation of the Claimant's abilities in the health areas of *eating*, *bathing* and *grooming* revealed that she is independent in those areas. Medical clarification distinguished the sores the Claimant was referring to as different from the specific bedsores referred to by the term *decubitus*. The Claimant demonstrated no additional deficits, and the Respondent correctly assessed the Claimant's eligibility for LTC Medicaid, or Nursing Facility Services.

### **CONCLUSION OF LAW**

Because the Claimant was correctly assessed as having less than the five deficits in health areas required by policy for medical eligibility for LTC Medicaid, the Respondent must deny the Claimant's application.

**DECISION**

The decision of the Respondent to deny the Claimant's application for LTC Medicaid is **upheld**.

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

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**Todd Thornton  
State Hearing Officer**