

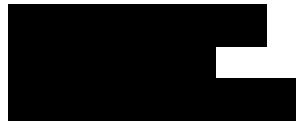


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 14, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1535

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

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

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

██████████,

Claimant,

v.

ACTION NO.: 15-BOR-1535

**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 May 7, 2015, on an appeal filed March 13, 2015.

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

At the hearing, the Respondent appeared by Kelley Johnson, WV Bureau for Medical Services. Appearing as a witness for the Department was ██████████, RN, West Virginia Medical Institute (WVMI). The Claimant appeared *pro se*. Appearing as the Claimant's witness was ██████████, RN, of ██████████, ██████████ WV. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Long-Term Care (Nursing Home) Medicaid Policy Manual, Chapter 514, §514.6.3, Medical Eligibility
- D-2 Long-Term Care (Nursing Home) Medicaid Pre-Admission Screening (PAS) completed by ██████████ on March 4, 2015
- D-3 Notice of Denial for Long-Term Care (Nursing Home), dated March 6, 2015
- D-4 Physician Determination of Capacity, dated May 13, 2014
- D-5 Minimum Data Set (MDS), Resident Assessment and Care Screening, dated January 1, 2015

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) A staff member from the Claimant's nursing home, [REDACTED] of [REDACTED] WV, completed a Pre-Admission Screening Form (Exhibit D-2) with Claimant on March 4, 2015, to assess her medical eligibility for the Long-Term Care (Nursing Home) Medicaid program (herein LTC Medicaid). Based on the information obtained from the form, a nurse from the WV Medical Institute (WVMI) assessed the Claimant with one deficit. The Department denied the Claimant's continuing participation in LTC Medicaid, reporting its findings to the Claimant in a Notice of Denial for Long-Term Care (Nursing Home), dated March 6, 2015 (Exhibit D-3).
- 2) The Claimant argued that she should have received six additional deficits for the functional abilities of dressing, grooming, continence and walking, for the professional and technical need of sterile dressing, and for administering medications.
- 3) The March 2015 PAS (Exhibit D-2) indicated that the Claimant was assessed at Level 1, "self-prompting" for the functional ability of dressing. The Department submitted as evidence a Minimum Data Set Resident Assessment and Care Screening (MDS) dated January 8, 2015 (Exhibit D-5), a facility-created assessment of the Claimant's functional status, cognitive abilities and general health in a number of areas, along with progress notes from her residency in the facility. According to the MDS, the Claimant did not require help or oversight at any time with dressing. A nursing note from the MDS dated February 13, 2015, reads, "Resident can dress self . . ." The Claimant testified that she was an overweight person who could not wear a sports bra, so she needed help hooking her bra. She stated her right foot was swollen due to a surgical wound on her right leg, so she could not put on her right shoe without assistance. She stated she needed help putting on any article of clothing that opens in the front, such as a shirt or jacket, because her right hand is paralyzed from a stroke. The Claimant's witness, a nurse from [REDACTED], testified that because of her stroke, the Claimant could not always dress herself unless she employed certain adaptive equipment. For example, she stated, the Claimant could not put on a jacket by herself.
- 4) The March 2015 PAS (Exhibit D-2) indicated the Claimant was assessed at Level 1, "self-prompting" for the functional ability of grooming. The January 2015 MDS (Exhibit D-5) indicated the Claimant did not require help or oversight with grooming. A nursing note from the MDS dated February 13, 2015, reads, "Resident can . . . perform personal hygiene . . ." The Claimant testified that she could not wash her left hand, clean her fingernails, or pull her hair back in a ponytail or braid because she did not have the use of her right hand. The

The Claimant's witness concurred that the Claimant was unable to perform these tasks without adaptive equipment.

- 5) The March 2015 PAS (Exhibit D-2) indicated that the Claimant was assessed at Level 2, "occasionally incontinent" for the functional ability of continence. The January 2015 MDS (Exhibit D-5) indicated on page 13 of 34 that the Claimant was "always continent" of bladder and bowel. Nursing notes from the MDS dated February 12, February 13 and February 20 all read that the Claimant was continent on those dates. The Claimant testified that she was totally incontinent of bladder. She testified that she wore the heaviest adult diaper available to her. She stated she had daily bladder accidents. The Claimant's witness testified that the Claimant does not have a record of bladder incontinence issues. She stated that it is possible the Claimant has some incontinence issues, but not to the degree necessary to be considered totally incontinent.
- 6) The March 2015 PAS (Exhibit D-2) indicated that the Claimant was assessed at Level 2, "supervision-assistive device" for the functional ability of walking. The January 2015 MDS (Exhibit D-5) indicates the Claimant could walk, but was only able to stabilize herself with staff assistance. A nursing note from the MDS dated February 13, 2015, reads, "Resident can ambulate 188 ft." The Claimant testified that she only could ambulate with her wheelchair beside her because her knees could give out at any moment. She stated she could walk only for a short distance, about 100 feet.
- 7) On the March 2015 PAS (Exhibit D-2) the Claimant was assessed as not having any professional or technical needs. The Claimant testified that she required the professional or technical need of sterile dressing. She testified that at the time of the March 2015 PAS, she required sterile dressing along with antibiotics on a surgical wound on her right leg. She stated the dressing had to be changed twice per day. The January 2015 MDS (Exhibit D-5) indicates on page 22 of 34 that the Claimant had an open lesion other than an ulcer or rash, and that she required the application of nonsurgical dressings. The Claimant's witness testified that the Claimant's physician ordered the Claimant's dressing be applied with an aseptic and not a sterile technique. She stated the Claimant needed help with her dressing and needed someone to change the dressing for her, but she was not ordered a sterile technique.
- 8) On the March 2015 PAS (Exhibit D-2) the Claimant was assessed as being able to administer her own medications "with prompting and supervision." The Claimant testified that she had shoulder pain, a thumb deformed by arthritis, and pain in her knees and lower back. She testified that because of these pains, she uses Biofreeze, a topical ointment. She stated that she cannot apply this topical medication to her back and shoulder without assistance. The Claimant's witness testified that the Claimant's physician ordered the Biofreeze for her right shoulder and bilateral hands and knees. She stated that the Claimant could not apply the ointment to her back, neck or shoulder without assistance.
- 9) The January 2015 MDS (Exhibit D-5) indicated on page 14 of 34 that the Claimant had diagnoses of a cerebrovascular accident, transient ischemic attack or stroke, and hemiplegia or hemiparesis, a paralysis affecting one side of her body.

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, Chapter 514, §514.6.3: Covered Services, Limitations, and Exclusions, for Nursing Facility Services, reads as follows regarding the medical eligibility determination process for Long-Term Care (Nursing Home) Medicaid:

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 received one deficit on her March 2015 PAS. She proposed that she receive additional deficits for the functional abilities of dressing, grooming, continence, walking, for the professional or technical need for sterile dressing, and for administering medications.

The MDS (Exhibit D-5) documented diagnoses of a stroke and hemiparesis, which supports the Claimant's contention that she should have received deficits for dressing, grooming and administering medications. However, the Claimant and her witness did not provide testimony or evidence to support the Claimant's contention that she should have received deficits for continence, walking, or the need for sterile dressing.

The Claimant should have received four (4) deficits on her March 2015 PAS. Because policy requires five (5) deficits, the Claimant does not qualify for Long-Term Care (Nursing Home) Medicaid.

CONCLUSION OF LAW

The Department assessed Claimant with one deficit on the March 6, 2015, Long-Term Care Medicaid Pre-Admission Screening. The Claimant and her witness provided evidence and testimony that she should have received three (3) more deficits, for a total of four (4) deficits. Because policy requires five (5) deficits, the Claimant does not qualify for Long-Term Care (Nursing Home) Medicaid, as defined in the WV Bureau for Medical Services' Long-Term Care (Nursing Home) Medicaid Policy Manual, §517.6.3.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to discontinue the Claimant's eligibility for Long-Term Care (Nursing Home) Medicaid.

ENTERED this 14th Day of May 2015.

Stephen M. Baisden
State Hearing Officer