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

June 9, 2015

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 15-BOR-1720

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

cc: Kelley Johnson, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 15-BOR-1720**

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 [redacted]. 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 June 8, 2015, on an appeal filed April 2, 2015.

The matter before the Hearing Officer arises from the March 27, 2015 decision by the Respondent to terminate the Appellant's Medicaid Long-Term Care benefits.

At the hearing, the Respondent appeared by Kelley Johnson, Bureau for Medical Services. Appearing as a witness for the Respondent was [redacted] RN, West Virginia Medical Institute. The Appellant appeared pro se. Appearing as witnesses for the Appellant were Jennifer Gower, Adult Protective Services Supervisor, WVDHHR; Katie Van Dyke, Adult Protective Services Worker, WVDHHR; [redacted], Business Office Manager, [redacted]; [redacted], Social Worker, [redacted]; and [redacted], Social Worker, [redacted]. 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 (Page 1)
- D-2 Pre-Admission Screening (PAS) form completed on March 17, 2015 (Pages 2-8)
- D-3 Notice of Denial for Long-Term Care (Nursing Home) dated March 27, 2015 (Page 9)
- D-4 Physician's Determination of Capacity (Page 10)
- D-5 Documentation submitted from physician (Pages 11-51)

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 March 17, 2015, Appellant was evaluated to determine medical eligibility for continued participation in the Medicaid Long-Term Care Program. The Pre-Admission Screening (PAS) form (D-2), signed by [redacted], MD, identified three (3) functional deficits – medication administration, bathing and vacating in the event of an emergency (mentally unable).

2) On or about March 27, 2015, Respondent issued notice (D-3) to Appellant 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. Consistent with its written notice, Respondent stipulated that the Appellant demonstrated three (3) functional deficits 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) Appellant proffered testimony to indicate that he believes he has enough medical problems that he should be able to stay at [redacted]. However, neither the Appellant nor any of his witnesses contested the findings on the PAS (D-2). In fact, [redacted] Social Worker at [redacted], reported that she believes the PAS accurately reflects Appellant's current medical condition.

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

The regulations that govern the Medicaid Long-Term Care (Nursing Facility) Program stipulate that an individual must demonstrate five (5) functional deficits (identified on the PAS) in order to qualify for the Medicaid nursing facility benefit. Undisputed evidence received in this case confirms the Appellant was demonstrating only three (3) functional deficits. As a result, Respondent's determination that the Appellant fails to meet the medical eligibility criteria is affirmed.

CONCLUSIONS OF LAW

The Appellant demonstrated three (3) functional deficits (medication administration, bathing and vacating) on the date of the assessment and – as a result of information provided during the hearing – no additional deficits were identified. Whereas the evidence confirms the Appellant was not demonstrating five (5) functional deficits, 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 Appellant's benefits and services provided through the Medicaid Long-Term Care Program.

ENTERED this ____Day of June 2015.

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Thomas E. Arnett
State Hearing Officer