



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

June 17, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1746

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,

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

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

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

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

██████████,

**Appellant,**

v.

**ACTION NO.: 15-BOR-1746**

**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 June 4, 2015, on an appeal filed April 6, 2015.

The matter before the Hearing Officer arises from the March 31, 2015, decision by the Respondent to discontinue the Appellant'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 Appellant appeared *pro se*. Appearing as the Appellant's witnesses were ██████████, Social Worker and ██████████, Administrative Director, of ██████████. 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 26, 2015
- D-3 Notice of Denial for Long-Term Care (Nursing Home), dated March 31, 2015
- D-4 Minimum Data Set (MDS), Resident Assessment and Care Screening, dated May 21, 2015, plus additional nursing records and progress notes from ██████████

**Appellant'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 Appellant's nursing home, [REDACTED], completed a Pre-Admission Screening Form (PAS) (Exhibit D-2) with Appellant on March 4, 2015, to assess his continuing medical eligibility for the Long-Term Care (Nursing Home) Medicaid program (herein LTC Medicaid).
- 2) Based on the information obtained from the PAS, a nurse from the WV Medical Institute (WVMI) assessed the Appellant with four deficits. The Department denied the Appellant's continuing participation in LTC Medicaid, reporting its findings to the Appellant in a Notice of Denial for Long-Term Care (Nursing Home), dated March 31, 2015 (Exhibit D-3).
- 3) The Appellant proposed that he should have received four additional deficits, for vacating a building in the event of an emergency, and for the functional abilities of continence, orientation and walking.

### **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 Appellant received four deficits on his March 2015 PAS. He proposed that he receive four additional deficits, for vacating a building in the event of an emergency, and for the functional abilities of continence, orientation and walking.

*Vacating a building in the event of an emergency:* The Appellant testified that he did not think he could get out of his building on his own in the event of an emergency. He stated that he believed he would need “an arm to lean on” in order to vacate his residence. The PAS indicates he could vacate “with supervision.” The nursing facility’s Minimum Data Set (MDS) and attached nursing notes (Exhibit D-4) indicates the Appellant can walk 500 feet with a single point cane. In order to receive a deficit for vacating in an emergency, his PAS would have to document that he was mentally or physically unable to vacate a building.

*Continence:* The Appellant testified that he had about one continence accident per week. The MDS and attached nursing notes (Exhibit D-4) contains a page labeled “Problems resident is at risk for because of functional decline” then contains a check list of problem areas for the Appellant, such as falls, unidentified pain, and complications of immobility. Incontinence is included in this check list. A number of items are checked on this list, but incontinence is not. In order to receive a deficit for incontinence, the evidence would have to document that he had at least three continence accidents per week.

*Orientation:* The Appellant testified that he had days when he had good memory and he had days when “I don’t have any memory.” He added that he had difficulty telling time. The MDS and attached nursing notes (Exhibit D-4) contains a report of a mental status interview wherein the Appellant answered certain simple, generally-accepted mental status questions, such as “What is the day of the week, the month and the year,” and “Who is the President of the United States?” He also was asked to remember three simple words. He correctly answered all of the questions

and recalled all of the words without error or prompting. In order to receive a deficit for orientation, the evidence would have to document that he was totally disoriented.

*Walking:* The Appellant testified that he was not stable when he walked. He stated he had damage to the right side of his body because he had brain surgery after a violent physical assault. As stated above, the MDS and attached nursing notes (Exhibit D-4) documents that the Appellant can walk 500 feet with a single-point cane. In order to receive a deficit for orientation, the evidence would have to document that the Appellant could not walk without one-person assistance at all times.

### **CONCLUSION OF LAW**

The Department assessed Appellant with four deficits on the March 26, 2015, Long-Term Care Medicaid Pre-Admission Screening. The Appellant did not provide evidence or testimony to support his proposal that he should have received another deficit. Because policy requires five deficits, the Appellant 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 Appellant's eligibility for Long-Term Care (Nursing Home) Medicaid.

**ENTERED this 17<sup>th</sup> Day of June 2015.**

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**Stephen M. Baisden**  
**State Hearing Officer**