



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

July 13, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2001

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Stacy Broce, Department Representative

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2001

**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 July 2, 2015, on an appeal filed May 4, 2015.

The matter before the Hearing Officer arises from the April 23, 2015 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 Appellant appeared *pro se*. 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 April 21, 2015
- D-3 Notice of decision, dated April 23, 2015
- D-4 Physician Determination of Capacity (form), dated February 27, 2015
- D-5 Documentation from the Appellant's nursing facility; Minimum Data Set (MDS) documents, dated April 19, 2015

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 Appellant was an applicant for Long Term Care (LTC) Medicaid, or Nursing Facility Services.
- 2) The Appellant's medical eligibility for LTC Medicaid was assessed and documented on an April 21, 2015 Pre-Admission Screening (PAS) document (Exhibit D-2).
- 3) The Appellant has no deficits in the health areas considered for medical eligibility for the program.
- 4) The Respondent issued the Appellant a notice of denial (Exhibit D-3) on April 23, 2015. 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 Appellant's PAS "reflected deficiencies that meet the severity criteria in [zero] areas..."
- 5) The Appellant proposed that four additional health areas – *eating, bathing, grooming, and decubitus* – should have been awarded in the Respondent's assessment.
- 6) The Appellant proposed no additional deficits in areas considered under the policy for the program.

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

The Respondent assessed the Appellant as having no deficits. Policy requires five deficits. The Appellant demonstrated no additional deficits. The Respondent expressed concern that he would cycle in and out of nursing homes because he does not reside long enough for his wounds to heal. Unfortunately, the Appellant's particular type of ulcers is not in a category of medical conditions considered by the medical eligibility policy for the program. The Respondent correctly assessed the Appellant's eligibility for LTC Medicaid, or Nursing Facility Services.

CONCLUSION OF LAW

Because the Appellant 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 Appellant's application.

DECISION

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

ENTERED this ____ Day of July 2015.

Todd Thornton
State Hearing Officer