State of West Virginia
DEPARTMENT OF HEALTH ANDHUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 24, 2015

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 15-BOR-3269

Dear [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 Official 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,

Lori Woodward
State Hearing Official
Member, State Board of Review

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

cc: Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 15-BOR-3269**

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES,

Respondent.

DECISION OF STATE HEARING OFFICIAL

INTRODUCTION

This is the decision of the State Hearing Official 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 November 19, 2015, on a timely appeal filed October 13, 2015.

The matter before the Hearing Official arises from the denial of the Respondent's application for Long Term Care (LTC) Medicaid based on medical ineligibility.

At the hearing the Respondent appeared by Kelley Johnson with the Bureau for Medical Services. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were her son, [redacted], and [redacted], social worker at [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Of note, by the consent of the Appellant and her son, the hearing proceeded without the APS Healthcare nurse who examined the documentation submitted with the application along with the Pre-Admission Screening (PAS).

Department's Exhibits:

- D-1 West Virginia Medicaid Provider Manual, Chapter 514.6 (excerpt)
- D-2 Pre-Admission Screening (PAS) form, dated August 20, 2015
- D-3 Notice of Denial for Long-Term Care (Nursing Home), dated August 25, 2015
- D-4 Documentation submitted from the physician

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 Official sets forth the following Findings of Fact.

FINDINGS OF FACT

1) The Appellant had a Long Term Care (LTC) Medicaid Pre-Admission Screening (PAS) assessment on August 20, 2015 to determine medical eligibility for Long Term Care services. (Exhibit D-2)

2) Eligibility requires deficits be established in at least five (5) functional areas. (Exhibit D-1) The Appellant did not meet the medical eligibility criteria for the program because deficits were established in only four (4) deficits in the functional areas of *medication administration*, *grooming*, *bathing*, and *dressing*. Notice of denial for Long-Term Care (nursing home) was sent on August 25, 2015. (Exhibit D-3)

3) The Appellant currently receives dialysis treatments four times a week and requires the use of a wheelchair after treatments. Otherwise, she is able to ambulate with the use of a "rollator" assistive device.

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, §514.6, *et. seg.*, details the resident eligibility requirements for LTC Medicaid services, as follows:

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) 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. These deficits will be determined based on the review by BMS/designee in order to qualify for the Medicaid nursing facility 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 Respondent assessed the Appellant as having four qualifying deficits in the areas of *medication administration, grooming, bathing, and dressing.* The Appellant proposed additional deficits should have been awarded for eating, professional care, and walking.

The Appellant's son testified that although the Appellant can pick up a spoon and feed herself, she cannot prepare food for herself. The Appellant was awarded a Level 1 in the area of eating. In order to qualify as a functional deficit in the area of eating, a Level 2 or higher must be awarded. Assistance with food preparation does not qualify.

Although the Appellant requires dialysis treatments four times a week, the Respondent's representative, Kelley Johnson (Ms. Johnson), testified that the types of professional care listed by policy does not encompass dialysis treatments. Ms. Johnson explained "parenteral fluids" means receiving life-sustaining fluids or use of G-tube (gastrointestinal tube).

In discussing the award of a Level 3 in wheeling, Ms. Johnson explained that per policy, a Level 3 or higher must be awarded in walking in order for wheeling to be counted as a qualifying deficit. Ms. Johnson explained in order to receive a Level 3, one-person assist, for walking, the Appellant would require someone to physically walk with her to take some of her weight during ambulation through the use of a device such as a gait belt. The Appellant was awarded a Level 2 in walking as she is able to use an assistive device on her own for walking and did not require a one-person assist with ambulation.

Based on the evidence submitted and testimony given, no additional functional deficits can be awarded. The Respondent correctly assessed the Appellant's eligibility for LTC Medicaid.

CONCLUSION OF LAW

Because the Appellant was correctly assessed as having less than the five deficits in the functional 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 24th day of November 2015.

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Lori Woodward, State Hearing Official