



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

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Cabinet Secretary

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Jolynn Marra
Interim Inspector General

July 30, 2020



RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1798

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: Alanna Cushing, Department Representative

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

██████████,

Appellant,

v.

Action Number: 20-BOR-1798

**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 22, 2020, on an appeal filed June 18, 2020.

The matter before the Hearing Officer arises from the June 1, 2020 decision by the Respondent to deny the Appellant's application for Long Term Care Medicaid (LTC-M) (Nursing Facility benefit) based on unmet medical eligibility.

At the hearing, the Respondent appeared by Alanna Cushing. Appearing as a witness for the Respondent was Mary Casto. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

D-1 BMS Provider Manual (excerpt)
 Chapter 514 Nursing Facility Services
 §§ 514.6.2 – 514.6.3

- D-2 Notice of Decision: Denial
Notice date: June 1, 2020
- D-3 Pre-Admission Screening (PAS) form
Assessment Date: June 1, 2020

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) The Appellant applied for Long Term Care Medicaid (LTC-M).
- 2) An assessment of the Appellant's medical eligibility for LTC-M was conducted on June 1, 2020. (Exhibit D-3)
- 3) By notice dated June 1, 2020, the Respondent advised the Appellant that he was determined medically ineligible for LTC-M, resulting in the denial of his LTC-M application. (Exhibit D-2)
- 4) This notice (Exhibit D-2) provided the specific basis for denial as "Eligibility for long-term care placement being funded by West Virginia Medicaid requires that you have at least five (5) areas of care needs (deficits) that meet the severity criteria. Documentation does not reflect that you have five (5) deficits at the level required; thus your request for long-term care (nursing facility) is being denied."
- 5) This notice (Exhibit D-2) additionally stated, "The PAS (Pre-Admission Screening form) reflected deficiencies that meet the severity criteria in 3 areas identified below," and listed deficits for the Appellant in the areas of *transferring*, *walking*, and *wheeling*.
- 6) The Appellant requires physical assistance (or Level 2) in the areas of *bathing* and *dressing*.
- 7) The Appellant is independent (or Level 1) in the area of *grooming*.
- 8) The Appellant is continent (or Level 1) in the area of *continence* of bladder and bowel.

APPLICABLE POLICY

The Bureau for Medical Services (BMS) Provider Manual, §514.6.3, states (emphasis in original):

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 designed 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 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 [*sic*] 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 Long Term Care Medicaid based on insufficient deficits to establish medical eligibility. The Respondent must show by a preponderance of the evidence that the Appellant did not have the five deficits required to establish medical eligibility for Long Term Care Medicaid (LTC-M).

Medical eligibility for LTC-M is assessed by a nurse whose findings are recorded on a PAS. The Respondent's nurse found the Appellant had three deficits (Exhibit D-3), resulting in the Respondent's determination of medical ineligibility (Exhibit D-2). The Appellant proposed deficits in four additional areas: *bathing, dressing, grooming, and continence*.

The Appellant was in an automobile accident, and was diagnosed with *Multiple Sclerosis, Muscle Weakness (generalized), and Unspecified osteoarthritis, unspecified site* (Exhibit D-3). The Appellant testified that he has problems with grip strength, flexibility, and balance. [REDACTED] is an employee with the [REDACTED], the nursing facility where the Appellant has resided since November 2019. Ms. [REDACTED] testified that she has observed the Appellant's difficulty with using his hands and with "standing time limitations," and that she keeps things close to the Appellant's bed due to his transfer, walking, and wheeling needs.

The Appellant testified that he is unable to reach his head when bathing, and that he also needs help cleaning his lower body because of his balance problems. He testified that he has fallen in the shower. The Appellant requires physical assistance with *bathing*, and the Respondent should have awarded a deficit in this area.

The Appellant testified that he is unable to put a shirt on when dressing, and that his balance and flexibility issues require him to have physical assistance in this area of care. The Respondent should have awarded the Appellant a deficit in the area of *dressing*.

In the area of grooming, the Appellant testified that he is independent with some grooming tasks such as nail care but requires physical assistance with hair care. With insufficient testimony to support a need for physical assistance with most grooming tasks, the Respondent was correct to assess the Appellant as independent in *grooming*.

Regarding the area of *continence*, the Appellant testified that he is continent of bladder and bowel. His testimony described difficulty getting to the restroom because of walking, wheeling, and transfer limitations rather than an inability to recognize an urge to use the toilet. He testified that the frequency of accidents was approximately once a month. The Respondent was correct to assess the Appellant as continent in this area.

The PAS provided in this case provided the levels assessed (Exhibit D-3) for the Appellant but did not provide details or comments supporting those assessed levels. The PAS also listed diagnoses that support the testimony from the Appellant regarding grip strength and how it impairs his ability in the areas of bathing and dressing. For these reasons, the testimony of the Appellant is given more weight than the final, assessed levels listed on the PAS in these areas.

With two additional deficits revealed through evidence and testimony, the Appellant established medical eligibility for LTC-M. The Respondent was incorrect to deny the Appellant's application for Long Term Care Medicaid based on medical reasons.

CONCLUSION OF LAW

Because the Appellant has a total of five deficits – three awarded on the June 2020 PAS and two revealed through evidence and testimony – the Respondent must not deny the Appellant’s application for Long Term Care Medicaid (Nursing Facility benefit).

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent’s decision to deny the Appellant’s application for Long Term Care Medicaid.

ENTERED this ____ Day of July 2020.

**Todd Thornton
State Hearing Officer**