



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
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Jolynn Marra  
Inspector General

June 14, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 22-BOR-1571

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 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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, Board of Review

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

cc: Brittany Mullins/Terry McGee, BMS, WV DHHR

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

**IN THE MATTER OF:**

**ACTION NO.: 22-BOR-1571**

██████████,

**Appellant,**

**vs.**

**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 convened on June 8, 2022, on appeal filed June 10, 2022.

The matter before the Hearing Officer arises from the February 1, 2022 decision by the Respondent to deny the Appellant Medicaid benefits under the Long-Term Care (LTC) (Nursing Facility) program due to a finding of medical ineligibility.

At the hearing, the Respondent appeared by Terry McGee, Program Manager for the Bureau for Medical Services. Appearing as a witness for the Respondent was Melissa Grega, RN, with KEPRO. The Appellant appeared *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence:

**Department's Exhibits:**

- D-1 West Virginia Medicaid Manual Chapter 514, §§514.6.1, 514.6.2, 514.6.3
- D-2 Notice of denial, dated February 1, 2022
- D-3 Pre-Admission Screening (PAS) form, dated January 27, 2022
- D-4 ██████████ Order Summary Report Active Orders as of February 1, 2022
- D-5 Physician's Progress notes, dated January 18, 2022

**Appellant's Exhibits:**

- A-1 060822 Hearing Attachments ToC and Notes
- A-2 [REDACTED] Provider Notes, date of service March 19, 2021
- A-3 West Virginia Department of Health and Human Resources, PRE-ADMISSION Screening, dated March 19, 2021
- A-4 West Virginia Department of Health and Human Resources, PRE-ADMISSION Screening, dated January 27, 2022
- A-5 Request for Hearing, dated April 27, 2022
- A-6 KEPRO Request for Release of Medical Information
- A-7 Appellant's Summary of Health Issues as of 30 May 2022
- A-8 Appellant's Summary of Major Health Issues and/or Events
- A-9 Incorrect and/or Out of Context Health Information compiled by Appellant

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 currently resides at [REDACTED], a nursing facility located in [REDACTED], West Virginia.
- 2) As part of the Appellant's application for LTC (Nursing Facility) Medicaid program, a summary of assessment findings were compiled in a Pre-Admission Screening (PAS) form on January 27, 2022. (Exhibit D-3)
- 3) The Respondent evaluated the information on the January 2022 PAS form and determined the Appellant was ineligible for LTC (Nursing Facility) Medicaid program.
- 4) On February 1, 2022, the Respondent advised the Appellant that she was determined medically ineligible for LTC (Nursing Facility) Medicaid due to a finding of substantial deficits in only four areas – *Medication Administration, Bathing, Grooming, and Dressing* – and the medical eligibility requirement for LTC (Nursing Facility) Medicaid program is a finding of at least five substantial deficits. (Exhibit D-2)
- 5) At the hearing, the Respondent's representative conceded that the Appellant should have been awarded an additional deficit in the area of vacating a building in the event of an emergency.
- 6) The Appellant has five substantial deficits so as to meet medical eligibility for the LTC (Nursing Facility) Medicaid program.

## APPLICABLE POLICY

**West Virginia Medicaid Manual** Chapter 514, §514.5.1, *Application Procedures*, explains that an application for nursing facility benefits may be requested by the resident, the family/representative, the physician, or a health care facility. The steps involved in approval for payment of nursing facility services are:

- The financial application for nursing facility services is made to the local DHHR office; and
- The medical eligibility determination is based on a physician's assessment of the medical and physical needs of the individual. At the time of application, the prospective resident should be informed of the option to receive home and community-based services. The Pre-Admission Screening (PAS) assessment must have a physician signature dated not more than 60 days prior to admission to the nursing facility. A physician who has knowledge of the individual must certify the need for nursing facility care.

**West Virginia Medicaid Manual** Chapter 514, §514.5.3, *Medical Eligibility Regarding the Pre-Admission Screening*, explains that to qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, seven days a week. The BMS has designated a tool known as the Pre-Admission Screening (PAS) form (Appendix B) 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 a 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 assists 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.) <b>Do not count outside the home.</b>

#27 The individual has skilled needs in one of these areas – (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

#28 Individual is not capable of administrating his/her own medications.

### **DISCUSSION**

To qualify medically for the LTC (Nursing Facility) Medicaid program, an individual must need direct nursing care twenty-four hours a day, seven days a week. The Respondent uses the PAS to determine whether an individual initially qualifies or continues to qualify for the program benefit. An individual must have a minimum of five deficits identified on the PAS in order to be determined medically eligible.

On January 27, 2022, the Appellant underwent a PAS to determine her medical eligibility for LTC (Nursing Facility) Medicaid program. The Appellant was assessed as having four qualifying deficits in the areas of medication administration, grooming, bathing and dressing. Because she did not meet the medical necessity requirement for the LTC (Nursing Facility) Medicaid program, the Respondent issued a denial notice on February 1, 2022.

At the hearing, the Respondent's representative conceded that the Appellant should have been awarded an additional deficit in the area of vacating a building in the event of an emergency. The award of this additional deficit allows the Appellant to have the five substantial deficits required to meet medical eligibility for the LTC (Nursing Facility) Medicaid program.

### **CONCLUSIONS OF LAW**

- 1) An individual must have a minimum of five (5) deficits identified on the PAS in order to qualify for the LTC (Nursing Facility) Medicaid program.
- 2) The Appellant was assessed as having four deficits on the January 2022 PAS in the areas of medication administration, grooming, bathing and dressing.
- 3) The Respondent's representative conceded the additional deficit of vacating a building in the event of an emergency should have been awarded to the Appellant.
- 4) The Appellant meets the medical eligibility requirement of five substantial deficits for LTC (Nursing Facility) Medicaid program.

**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 (Nursing Facility) Medicaid program based on medical ineligibility.

**ENTERED this 14<sup>th</sup> day of June 2022.**

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Lori Woodward, Certified State Hearing Officer