



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Jolynn Marra  
Inspector General

October 14, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1958

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

CC: Terry McGee II, Bureau for Medical Services  
Lori Tyson, Bureau for Medical Services

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

██████████,

**Appellant,**

v.

**ACTION NO.: 22-BOR-1958**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened September 21, 2022 on an appeal filed with the Board of Review on August 23, 2022.

The matter before the Hearing Officer arises from the Respondent's July 7, 2022 decision to deny the Appellant medical eligibility for Medicaid Long-Term Care admission.

At the hearing, the Respondent appeared by Terry McGee II, Bureau for Medical Services. Appearing as a witness on behalf of the Respondent was Melissa Grega, RN, KEPRO. The Appellant appeared *pro se*. All witnesses were sworn in. Neither party submitted evidence.

**Department's Exhibits:**

None

**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 following Findings of Fact are set forth.

## FINDINGS OF FACT

- 1) The Appellant resides at [REDACTED] (hereafter, Facility), a skilled nursing facility.
- 2) On July 7, 2022, the Facility completed a Pre-Admission Screening (PAS) to determine the Appellant's medical eligibility for Medicaid Long-Term Care (LTC) admission.
- 3) On July 7, 2022, the Respondent issued a notice advising the Appellant was medically ineligible for Medicaid LTC admission because the information submitted on the PAS failed to establish at least five (5) areas of care needs that met the severity criteria for eligibility.
- 4) The PAS was signed and dated by the Appellant's physician.
- 5) The PAS included attachments containing the Appellant's most recent health assessment data.
- 6) The PAS did not indicate the presence of any areas of care needs that met severity criteria for Medicaid LTC eligibility.

## APPLICABLE POLICY

**Bureau for Medical Services (BMS) Manual §§ 414.5.1 and 514.5.3 (Effective July 1, 2020) provide in pertinent parts:**

The medical eligibility determination is based on a physician's assessment of the medical and physical needs of the individual ... The Pre-Admission Screening (PAS) must contain the signature of a physician who has knowledge of the individual and certify the need for nursing facility care.

An individual must have a minimum of five deficits identified on the PAS. These deficits may be any of the following:

- #24: Decubitus - Stage 3 or 4
- #25: In the event of an emergency, the individual is mentally or physically unable to vacate a building. Independently and with supervision are not considered deficits.
- #26: Functional abilities of the individual in the home:
  - Eating: Level 2 or higher (physical assistance)
  - 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 or two person assistance)

- Walking: Level 3 or higher (one person assistance)
- Wheeling: Level 3 or higher (must be level 3 or 4 on walking)
- #27: Individual has skilled needs in one of these areas: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations.
- #28: Individual is not capable of administering his own medications.

The assessment must be completed, signed, and dated by a physician. The physician may apply an electronic signature or check Box #39 and apply a physical signature. The signed page is attached to the electronic record.

## DISCUSSION

The Appellant disagrees with the Respondent's determination that he was ineligible for Medicaid LTC due to lacking deficits in five functioning areas at the time of his physician-certification July 7, 2022 PAS.

The Respondent bears the burden of proof. The Respondent had to prove by a preponderance of the evidence that the Appellant did not have deficits in five functioning areas at the time of the July 7, 2022 PAS completion. No evidence was entered to establish that the Appellant presented with a decubitus or required skilled needs at the time the PAS was completed.

The Respondent is required to rely on information contained in the PAS for physician certification of the Appellant's medical needs. The Appellant's physician completed the PAS. Under *Medical Assessment*, on the PAS, the physician checked the box that stated, "Checking this box certifies that attached documents contain the most recent health assessment data available for this member..." While the Appellant testified that he disagreed with the diagnoses contained within the PAS, no evidence was entered to support that the physician completing the PAS was unreliable or depended upon unreliable information.

To be eligible for a deficit in the functional areas of *eating, bathing, grooming, and dressing*, the PAS had to reflect a Level 2 or higher functioning ability — requires physical assistance or more. Pursuant to the PAS, the Appellant is able to complete tasks in these functioning areas independently or with supervision. The Appellant provided testimony that he requires supervision when transferring into the shower and relies upon assistive devices and fixtures to balance himself. The Respondent did not dispute that the Appellant presents with balance issues related to the Appellant's medical needs. However, the policy stipulates that to meet severity criteria in these areas, the Appellant must require physical assistance, not supervision or use of assistive devices. Because the preponderance of evidence failed to verify the Appellant required physical assistance in the functional areas of *eating, bathing, grooming, and dressing*, additional deficits cannot be awarded in these areas.

To be eligible for a deficit in the functioning area of *continence*, the PAS had to reflect a Level 3 or higher functioning ability — incontinence. Pursuant to the PAS, the Appellant is continent. No evidence was entered to establish that the Appellant presented with incontinence.

To be eligible for a deficit in the functioning area of *orientation*, the PAS had to reflect a Level 3 or higher functioning ability — totally disoriented, comatose. Pursuant to the PAS, the Appellant was oriented. No evidence was entered to establish that the Appellant was totally disoriented or comatose at the time the PAS was completed.

To be eligible for a deficit in the functioning area of *walking*, the PAS had to reflect a Level 3 or higher functioning ability— requires one person physical assistance. To be eligible for a deficit in the functioning area of *wheeling*, the PAS had to reflect a Level 3 or higher functioning ability and establish a Level 3 or Level 4 in the functioning area of *walking*. Pursuant to the PAS, the Appellant was Level 2 — requires supervision/assistive device — in the functioning area of *walking*, and Level 2 — wheels independently — in the functioning area of *wheeling*. During the hearing, the Appellant provided testimony regarding balance issues and requiring use of assistive devices while walking. No evidence was presented to establish that the Appellant required physical assistance to walk at the time of the PAS. Because the preponderance of evidence failed to establish the Appellant had a Level 3 or higher functioning ability and required physical assistance in the functioning area of *walking*, additional deficits cannot be awarded for the functioning areas of *walking* and *wheeling*.

To be eligible for a deficit in the functioning area of *administering medication*, the PAS had to reflect that the Appellant was not capable of administering his own medication. Pursuant to the PAS, the Appellant is capable of administering his own medications. During the hearing, the Appellant testified that upon facility discharge, he would have barriers obtaining his medications from the pharmacy or mailbox. The policy specifies that the Appellant must not be able to administer his medications, not that he must not be able to obtain his medications. No evidence was entered to establish that the Appellant is physically unable to administer his medications.

### **CONCLUSIONS OF LAW**

- 1) The policy requires an applicant to demonstrate deficits in five functioning areas to medically qualify for Medicaid LTC.
- 2) The preponderance of evidence reflected that the Appellant lacked deficits in five functioning areas required by the policy.
- 3) The Respondent correctly denied the Appellant eligibility for Medicaid LTC.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for Medicaid Long-Term Care admission.

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

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**Tara B. Thompson, MLS**  
State Hearing Officer