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

Bill J. Crouch
Cabinet Secretary

Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 30018
Tara.B.Thompson@wv.gov

Sheila Lee
Interim Inspector General

November 10, 2022

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 22-BOR-2165

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

[redacted],

Appellant,

v. **ACTION NO.: 22-BOR-2165**

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 [redacted]. 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 on October 18, 2022, on an appeal filed with the Board of Review on September 26, 2022.

The matter before the Hearing Officer arises from the Respondent's August 19, 2022 decision to deny the Appellant medical eligibility for Medicaid Long-Term Care (LTC) 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 and represented himself. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:
D-1 Bureau for Medical Services (BMS) Chapter 514 Policy Excerpt
D-2 Notice of Denial for Medicaid LTC, dated August 19, 2022
D-3 Pre-Admission Screening (PAS), created August 18, 2022
D-4 [redacted] Medication Review Report, Progress Notes

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) On August 19, 2022, the Respondent denied the Appellant medical eligibility for Medicaid LTC because the PAS did not reflect that the Appellant had deficits in five areas of care (Exhibit D-2).

2) The August 19, 2022 Medicaid LTC denial notice reflected the Appellant had deficiencies that met the severity criteria in the areas of *medication administration, bathing,* and *walking* (Exhibits D-2 and D-3).

3) On August 18, 2022, [redacted] (hereafter, the Facility) completed a Pre-Admission Screening (PAS) with the Appellant (Exhibit D-3).

4) The Facility's physician, [redacted], affixed a typed signature to the PAS (Exhibit D-3).

5) The Facility's physician indicated the Appellant's rehabilitative potential is limited, recommended nursing facility placement only — with potential eventual ability to return home or to be discharged, and estimated the Appellant's length of Facility stay to be three to six months (Exhibit D-4).

6) The PAS reflected the Appellant was a Level 1-Self/Prompting in the areas of *eating, dressing,* and *grooming* (Exhibit D-3).

7) The PAS reflected the Appellant was a Level 2-Occasional Incontinent in the areas of *continent/bladder* and *continent/bowel* (Exhibit D-3).

8) The PAS reflected the Appellant was Level 1-Independent in the area of *transferring* (Exhibit D-3).

9) At the time of the PAS, the Appellant required physical assistance in the area of *transferring*.

10) At the time of the PAS, the Appellant required the use of a foley catheter (Exhibit D-4).

11) On August 18, 2022, the Appellant had an active diagnosis for Muscle Weakness (Exhibit D-4).

12) The PAS reflected the Appellant was a Level 2-wheels independently in the area of *wheeling* (Exhibit D-4).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §§ 514.5.1 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 Respondent denied the Appellant medical eligibility for Medicaid LTC benefits because the PAS — completed by the Facility — failed to establish the Appellant had deficits in five areas of care needs. The Appellant argued that he should have received deficits in the areas of *incontinence* and *transferring*. The Appellant did not argue that he should be awarded deficits in additional areas of care.

The Respondent had to prove by a preponderance of the evidence that the Appellant did not have deficits in the areas of *incontinence* and *transferring* at the time of the PAS completion. The

Respondent argued that the eligibility determination was made automatically based on information entered on the PAS by the Facility. The evidence reflected that the PAS did not award the Appellant deficits in the areas of *incontinence* and *transferring*.

During the hearing, the Appellant argued that he required physical assistance transfering to shower. The Appellant testified that he cannot walk and has no feeling below his waist. The PAS reflected that the Appellant requires use of a wheelchair and is a Level 3 in the areas of *bathing* and *walking*. The Respondent did not contest the Appellant's testimony that he required physical assistance transferring to shower. The Facility records indicated that the Appellant had an active diagnosis of muscle weakness at the time of the PAS. At the time of the PAS, the Appellant had an active order for 20 physical therapy visits within 28 days for neuromuscular reeducation and gait training. The preponderance of the evidence supported the Appellant's argument that he required physical assistance when *transferring*.

During the hearing, the Appellant argued that he requires the use of a "foley bag" and should have been assessed as incontinent of bowel. During the hearing, the Respondent's witness indicated that if the Facility had reflected the Appellant's use of a foley catheter on the PAS, that a deficit would have been awarded in the area of *continence*. The Facility records indicate the Appellant had an active order for a foley catheter when the PAS was completed. The preponderance of the evidence established that the Appellant should have received a deficit in the area of *continence*.

CONCLUSIONS OF LAW

1) The policy stipulates that the Appellant must have deficits in five functioning areas to medically qualify for Medicaid LTC.

2) The preponderance of evidence demonstrated the Appellant had deficits in the areas of *medication administration, bathing, walking, transferring,* and *incontinence* when the PAS was completed.

3) The Respondent incorrectly denied the Appellant medical eligibility for Medicaid LTC.

DECISION

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

ENTERED this 10th day of November 2022.

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Tara B. Thompson, MLS
State Hearing Officer