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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
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Sheila Lee
Interim Inspector General

December 6, 2022

[redacted]
[redacted]6

RE: [redacted] v. WVDHHR
ACTION NO.: 22-BOR-2458

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Terry McGee, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 22-BOR-2458**

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 found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on December 6, 2022, on an appeal filed November 9, 2022.

The matter before the Hearing Officer arises from the November 2, 2022 decision by the Respondent to deny Long-Term Care medical assistance.

At the hearing, the Respondent appeared by Terry McGee, Program Manager, Bureau of Medical Services. Appearing as a witness for the Respondent was Melissa Grega, Nurse Reviewer, KEPRO. The Appellant was self-represented. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Denial for Long-Term Care (Nursing Facility)
D-2 Bureau of Medical Services, Provider Manual, Chapter 514.6.1-514.6.3
D-3 Pre-Admission Screening dated November 2, 2022
D-4 [redacted] Order Summary Report dated November 2, 2022
D-5 [redacted] Admission Record dated November 2, 2022
D-6 [redacted] Physician Report dated October 26, 2022

Appellant's Exhibits:

A-1 Magnetic Resonance Imaging Report dated November 17, 2022
A-2 Pre-Admission Screening Rebuttal information

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's medical eligibility was assessed for Long-Term Care Medicaid (LTC) assistance.

2) On November 2, 2022, a Pre-Admission Screening (PAS), a requirement to determine medical eligibility for LTC assistance, was conducted by [redacted], M.D.

3) The PAS documented deficits in the life areas of dressing and vacating during an emergency.

4) On November 2, 2022, the Respondent issued a Notice of Denial to the Appellant citing that the PAS did not document the required number of life area deficits. (Exhibit D-1)

5) The PAS rated the Appellant as a Level 3, requiring situational assistance with wheeling.

6) The PAS rated the Appellant as a Level 2, requiring supervision and assistive devices with walking.

7) The PAS rated the Appellant as a Level 2, requiring supervision and assistive devices with transferring.

APPLICABLE POLICY

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

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

Policy dictates that in order to qualify for Long-Term Care Medicaid assistance an individual must need direct nursing care twenty-four hours a day, seven days a week and have a minimum of five deficits identified on the PAS. The Appellant appealed the Respondent's decision to deny medical eligibility based on required deficits citing that she requires assistance in five of the designated life areas. The Respondent must show by a preponderance of the evidence that the Appellant did not meet the medical criteria in at least five areas of need.

The November 2, 2022 PAS documented that the Appellant met the functional criteria for deficits in the areas of dressing and vacating during an emergency. The Appellant testified that she experiences issues with her vertebrae and spine which result in difficulties in her ability to raise her arms above her head. To support her claims, the Appellant provided a Magnetic Resonance Imaging report (Exhibit A-1), conducted on November 17, 2022, which documents a herniation of discs of her spine and the compression of the nerve roots of her spinal cord. The Appellant purported that she requires a future surgery and if left untreated, she will eventually become paralyzed. The Appellant contends that additional deficits should be awarded in the areas of walking, transferring, and wheeling.

Walking-The Appellant indicated that she requires the use of a wheelchair due to ambulation

issues. The Appellant reported that she unable to ambulate long distances and is a risk for falling. The Appellant's testimony is credible and supported by the additional documentation provided with the PAS (Exhibit D-4) dated November 2, 2022 that reveals the Appellant should be encouraged to ambulate with assistive devices as *it can be tolerated* [emphasis added] supports the Appellant's contention that she requires physical assistance with ambulation. Testimony revealed the Appellant is dependent on the wheelchair for ambulation; therefore, it is reasonable to assume that the Appellant, due to her risk for falling, would require personal assistance to ambulate. Additionally, the Appellant was rated as physically unable to vacate her home during an emergency; therefore, it is reasonable to assume that the Appellant would require assistance with ambulation. Because the Appellant would require physical assistance with ambulation, a deficit in the contested area **should be** awarded.

Wheeling-The Appellant testified she primarily utilizes a wheelchair in her home for ambulation. The Appellant indicated that she goes from the bed to her wheelchair to move about her residence. The PAS assessment rated the Appellant as a Level 3, requiring situational assistance in the home. Because the Appellant was rated as a Level 3 for wheeling and should be rated as a Level 3 in regard to her walking in the home, a deficit in the area of wheeling **should be** awarded.

Transferring-The Appellant testified that she transfers from her bed to the wheelchair. The Appellant's testimony indicated that she is unable to lift her arms above her head due to the issues with her vertebrae. Her testimony concerning her range of motion is credible and supported by the previously awarded deficits in the areas of dressing and her inability to vacate during an emergency. The additional documentation (Exhibit D-4) dated November 2, 2022 which documents that the Appellant is encouraged to transfer independently *as tolerated* [emphasis added]. Therefore, it is reasonable to assume that the Appellant requires assistance to transfer. The Appellant's testimony coupled with supporting evidence and the awarding of deficits in dressing and vacating during an emergency support the Appellant's requirement for assistance in the area of transferring. Because the Appellant would require physical assistance in the area of transferring, a deficit **should be** awarded in the contested area.

Because the Appellant provided credible testimony to support three additional deficits on the PAS, the Respondent's decision ot deny the Appellant's request for Long-Term Care Medicaid assistance cannot be affirmed.

CONCLUSIONS OF LAW

1) An individual must have a minimum of five (5) deficits identified on the PAS to be determined eligible for the Long-Term Care Medicaid program.

2) The evidence supports that the Appellant should have been awarded deficits in the areas of walking, wheeling, and transferring.

3) The Appellant meets medical criteria of demonstrating five (5) deficits on the PAS.

4) The Respondent incorrectly denied the Appellant's eligibility for Long-Term Care Medicaid assistance.

DECISION

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

ENTERED this _____ day of December 2022.

_____

Eric L. Phillips
State Hearing Officer