



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 8, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 6, 2006. Your hearing request was based on the Department of Health and Human Resources' decision to deny your brother's application for the Medicaid Long-Term Care Program due to medical ineligibility.

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.

Medicaid Long-Term Care Services are provided to eligible Medicaid individuals who reside in a nursing care or ICF/MR facility. Individuals eligible for coverage under this group must qualify medically. The medical evaluation assessment must establish the existence of a specified number and degree of functional care needs. (West Virginia Income Maintenance Manual Sections 17.1 and 17.11)

Information submitted at the hearing revealed that your brother's condition as of the October 5, 2006 medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify him for participation in the Medicaid Long-Term Care Program.

It is the decision of the State Hearing Officer to **uphold** the Agency's determination that your brother is medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Pamela L. Hinzman
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Emily Keefer, Bureau for Medical Services, DHHR
[REDACTED] Nursing Home and Rehabilitation

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

vs.

Action Number 06- BOR- 3303

West Virginia Department of Health & Human Resources,

Respondent.

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 8, 2006 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on December 6, 2006 on a timely appeal filed November 14, 2006. It should be noted here that the Claimant has been found medically ineligible for the Medicaid Long-Term Care Program.

II. PROGRAM PURPOSE:

The program entitled **Medicaid Long-Term Care** (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Nursing Home Care is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

III. PARTICIPANTS:

_____, brother of Claimant
_____, Director of Social Services, _____ Nursing Home and Rehabilitation
_____, Assistant Director of Nursing, _____
_____, Social Worker, _____

Emily Keefer, Program Manager, Long-Term Care Program, BMS, DHHR (participating telephonically)
Stacy Leadman, RN, West Virginia Medical Institute (participating telephonically)

Presiding at the hearing was Pamela Hinzman, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Claimant is medically eligible for the Medicaid Long-Term Care Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 17.1 and 17.11
West Virginia Medicaid Manual Section 508.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits

- D-1 West Virginia Medicaid Manual Section 508.2
- D-2 PAS form completed October 5, 2006
- D-3 Medicaid Long-Term Care Program denial letter dated October 12, 2006

VII. FINDINGS OF FACT:

- 1) A PAS medical evaluation (D-2) was completed for the Claimant, who has been diagnosed with lung cancer, Chronic Obstructive Pulmonary Disease and depression, on October 5, 2006 to determine medical eligibility for the Medicaid Long-Term Care Program. It was determined that the Claimant, who currently resides at Eagle Pointe Nursing Home and Rehabilitation, is medically ineligible for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute nurse testified that one (1) qualifying functional deficit was found for the Claimant in the area of inability to administer medication. The Claimant was notified of the denial of long-term care services on October 12, 2006 (D-3).
- 3) The Director of Nursing at [REDACTED] testified that the Claimant has suffered respiratory failure two times in the past year and that his condition can change quickly due to his respiratory problems. Tests indicate that the clotting time of the Claimant's blood also fluctuates. The Claimant's brother testified that the Claimant is an alcoholic, can't remember things, and could not function independently. He testified that his brother, who previously had a seizure and was discovered near death by his landlord, has nowhere to go and needs to be in a facility due to health risks. [REDACTED] Director of Social Services testified that the Claimant stays in bed all day at times and that he has hearing and vision problems. She voiced concerns about the availability of services for the Claimant based on the level of care he requires.
- 4) West Virginia Medicaid Manual Section 508.2 (D-1) states, in part:

To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care twenty-four (24) hours a day, seven (7) days a week. The Bureau has designated a tool known as the Pre-Admission Screening form (PAS) 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 (5) deficits identified

on the PAS in order to qualify for the Medicaid nursing facility benefit. These deficits may be any of the following:

- #24 Decubitis- 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 The individual has skilled nursing care needs in one or more of these areas: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings or irrigations.
- Individual is not capable of administering his/her own medications.

The assessment tool designated by the Bureau for Medical Services must be completed and signed and dated by a physician. It is then forwarded to the Bureau or its designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility no matter what the payment source for services.

VIII. CONCLUSIONS OF LAW:

- 1) To qualify medically for the Medicaid Long-Term Care Program, policy specifies that an individual must require direct nursing care twenty-four (24) hours a day, seven (7) days a week. A tool known as the Pre-Admission Screening (PAS) form is utilized for physician certification of the medical needs of individuals applying for the Medicaid benefit. The PAS is completed and forwarded to the Bureau for Medical Services or its designee (West Virginia Medical Institute) for medical necessity review. Evidence reveals that a PAS was completed on October 5, 2006 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care Services.
- 2) Policy holds that to medically qualify for the nursing home Medicaid benefit, an individual must have a minimum of five (5) qualifying deficits on the PAS. These deficits are derived from a combination of assessment elements on the medical evaluation. The Claimant's PAS revealed that he has one (1) qualifying deficit in the areas of functional limitation.
- 3) Those testifying during the hearing addressed the Claimant's medical condition and voiced concerns

about the Claimant's ability to live independently. However, none of the information prompted the awarding of any additional functional deficits specified in policy. Therefore, the Claimant continues to lack the five (5) functional deficits required for medical eligibility.

- 4) The Department's decision to deny the Claimant's Medicaid Long-Term Care application due to medical ineligibility is correct.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Agency's decision to deny medical eligibility for the Medicaid Long-Term Care Program.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 8th day of December, 2006.

Pamela L. Hinzman
State Hearing Examiner

THE CLAIMANT'S RECOURSE TO HEARING DECISION

A. CIRCUIT COURT

An adverse decision of a State Hearing Officer is subject to judicial review through a Writ of Certiorari (West Virginia Code 53-3-1 et seq.) filed in the Circuit Court of Kanawha County within four (4) months from the date of the hearing decision.

The court may determine anew the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision may be appealed to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATES DEPARTMENT OF AGRICULTURE

If the hearing decision involves food stamps and you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.