



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 9, 2009

-----for -----  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 2, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny -----'s application for Long Term Care (Nursing Facility) Medicaid.

In arriving at a decision, the State Hearings 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.

Eligibility for the Long Term Care Medicaid program is based on current policy and regulations. Some of these regulations state that an individual must have a minimum of five (5) deficits identified on the Pre-Admission Screening form in order to qualify for the nursing facility care (Nursing Facility Services Policy Manual § 514).

The information submitted at your hearing revealed that ----- does not meet the medical criteria as required by policy to qualify for Long Term Care Medicaid.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to deny ----- Long Term Care Medicaid.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review  
Bureau of Medical Services

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1131**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 2, 2009 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 June 2, 2009 on a timely appeal, filed April 29, 2009.

**II. PROGRAM PURPOSE:**

The Program entitled Long Term Care Medicaid (Nursing Facility) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources. It 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 (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria

**III. PARTICIPANTS:**

-----, Claimant's Daughter and Medical Power of Attorney  
-----, Claimant's Son-in-Law

Kelley Johnson, Bureau of Medical Services  
Jenny Craft, RN, West Virginia Medical Institute

All participants testified by phone.

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether or not the Department's decision to deny Claimant's application for Long Term Care Medicaid is correct.

**V. APPLICABLE POLICY:**

Nursing Facility Services Policy Manual § 514.8 – 514.8.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Nursing Facility Services Policy Manual § 514.8 – 514.8.2
- D-2 Pre-Admission Screening Form dated April 15, 2009
- D-3 Denial Notification Letter dated April 20, 2009
- D-4 Nurses' Notes, Physicians Orders and Resident Assessment

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) An application for Long Term Care Medicaid was made on Claimant's behalf. A Pre-Admission Screening (PAS) form was completed on April 15, 2009 to determine Claimant's eligibility for the program. Claimant was awarded deficits in vacating in an emergency and medication administration (D-2).

- 2) A denial notification letter dated April 20, 2009 was issued which read in part (D-3):

Your request for Long-Term Care (Nursing Home) admission has been denied.

Eligibility for long-term care placement being funded by Medicaid requires that you have at least five (5) areas of care needs (deficits) that meet the severity criteria. Documentation does not reflect that you have 5 deficits at the level required.

- 3) Claimant's son-in-law, ----, testified that Claimant is unable to live on her own. Although not physically incapacitated to the degree that policy requires, Claimant has severe mental problems that render her a danger to herself and to others. Claimant is suicidal, combative, depressed and delusional. Claimant's mental instability is clearly documented in the nurses' notes from the nursing facility (D-4).

Claimant has no other place to go other than a nursing facility. Her family is unable to care for her. Adult Protective Services has advised that Claimant should not be left to care for herself alone.

-----agreed with the deficits that Claimant was awarded and understood the policy. There are no other options available at this time if Claimant is released from the nursing facility.

4) Nursing Facility Services Policy Manual § 514.8.2 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.

#28 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) Policy dictates that to qualify medically for Long-Term Care Medicaid, an individual must have a minimum of five (5) functional deficits on the PAS. Claimant was awarded two (2) qualifying deficits on her PAS assessment.
- 2) Based on information presented during the hearing, no additional deficits can be awarded to the Claimant. Claimant does not meet the medical criteria required for Long Term Care Medicaid.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant Long Term Care Medicaid.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 9<sup>th</sup> Day of June, 2009.**

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**Kristi Logan  
State Hearing Officer**