



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

July 9, 2009

-----for -----

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 30, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your mother's benefits under 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 Medicaid Manual Section 514)

Information submitted at the hearing reveals that your mother's condition as of her May 21, 2009 medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify 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 mother is medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

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

cc: Chairman, Board of Review
Lorna Harris, Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

-----,

Claimant,

vs.

Action Number 09- BOR- 1283

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 July 9, 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 30, 2009 on a timely appeal filed May 28, 2009.

II. PROGRAM PURPOSE:

Medicaid Long-Term 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:

-----, Claimant's daughter

Kelley Johnson, Program Manager- LTC/ICF-MR Program, Bureau for Medical Services

Jenny Craft, RN, Case Manager, West Virginia Medical Institute

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

It should be noted that all parties participated telephonically.

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 Medicaid Manual Sections 514, 514.8, 514.8.1 and 514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Medicaid Manual Sections 514, 514.8, 514.8.1 and 514.8.2
- D-2 Pre-Admission Screening form completed on May 21, 2009
- D-3 Denial letter dated May 27, 2009
- D-4 Supporting documentation

Claimant's Exhibits:

- C-1 Letter from -----, MS, PA-C

VII. FINDINGS OF FACT:

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on May 21, 2009 to determine whether she meets medical eligibility requirements for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute (WVMI) representative testified that three (3) qualifying functional deficits – physical assistance with bathing, inability to vacate in the event of an emergency, and inability to administer medication - were identified for the Claimant as a result of the PAS assessment.
- 3) The Claimant was notified of the denial of Long-Term Care services in a letter dated May 27, 2009 (D-3).
- 4) The Claimant's daughter testified that the Claimant requires assistance with food preparation and prompting with eating. In addition, the Claimant takes up to 20 minutes to dress and would wear the same clothing for days at a time. At times, the Claimant is unaware of the day. The Claimant also uses a walker as she has fallen several times and cannot get up without assistance. The Claimant's daughter provided a letter (C-1) from -----, MS, PA-C, addressing the Claimant's declining mental function.
- 5) West Virginia Medicaid Manual Section 514.8.2 (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.

#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) 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 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 May 21, 2009 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care services.
- 2) Policy holds that to medically qualify for Long-Term Care, 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 three (3) qualifying deficits in the areas of functional limitation.

- 3) While the Claimant's daughter testified that the Claimant needs assistance with food preparation and must be prompted to eat and change her clothes, policy specifies that an individual must require physical assistance with eating and dressing in order to receive deficits in these areas. Food preparation is not considered. Testimony reveals that the Claimant uses a walker to ambulate, however an individual must require one-person physical assistance with walking to receive a deficit in this area. The Claimant's daughter indicated that the Claimant is disoriented at times, but policy states that an individual must be totally disoriented or comatose to receive a deficit for orientation.
- 4) As no additional deficits can be awarded to the Claimant based on information presented during the hearing, the Department's decision to deny Medicaid Long-Term Care benefits 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 9th day of July, 2009.

**Pamela L. Hinzman
State Hearing Officer**