



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

December 7, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 15, 2009. Your hearing request was based on the Department of Health and Human Resources' proposed termination of Long Term Care Medicaid based on 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.

The determination of medical eligibility for Long Term Care Medicaid is based on current policy and regulations. These regulations state that to qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, seven 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 Medicaid applicants. An individual must have a minimum of five deficits identified on the PAS in order to qualify for the Medicaid nursing facility benefit. (Nursing Facility Services Provider Manual Chapter 514)

The information that was submitted at your hearing revealed that the Department was correct in its determination of two deficits and was correct in its determination of medical ineligibility for the program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposed termination of Long Term Care Medicaid based on unmet medical eligibility.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Lorna Harris, Department Representative  
Lisa Goodall, WVMI

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1391**

**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 December 7, 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 September 15, 2009 on a timely appeal, filed June 23, 2009.

All persons offering testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The program entitled Long Term Care Medicaid (nursing facility services) 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

-----, Claimant's witness

-----, Claimant's witness, [REDACTED] Center - [REDACTED]

Kelley Johnson, Department Representative

Lisa Goodall, RN, WVMI

All persons participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its determination that the Claimant was not medically eligible for Long Term Care Medicaid.

**V. APPLICABLE POLICY:**

Nursing Facility Services Provider Manual, Chapter 514; §514.8; §514.8.1; §514.8.2

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

**Department's Exhibits:**

- D-1 Nursing Facility Services Provider Manual, Chapter 514; §514.8; §514.8.1; §514.8.2
- D-2 Pre-Admission Screening (PAS) dated May 20, 2009
- D-3 Notice of Denial Determination dated June 15, 2009
- D-4 Supporting documentation

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 51-year old male recipient of Long Term Care Medicaid, residing at [REDACTED] Center - [REDACTED] a nursing facility. A Pre-Admission Screening (PAS) form was completed on May 20, 2009 (Exhibit D-2) to reassess the Claimant's medical eligibility for nursing facility services.
- 2) The Department issued a Notice of Denial Determination (Exhibit D-3) to the Claimant on or about June 15, 2009. The notice states, in pertinent part:

**NOTICE: YOUR REQUEST FOR LONG-TERM CARE (NURSING HOME) ADMISSION HAS BEEN DENIED.**

An evaluation of your current limitations related to your medical condition(s) was conducted based on the information submitted to WVMI on the Pre-Admission Screening (PAS) form. It has been determined **you are ineligible** for long-term care (nursing home) admission **based upon WV Medicaid criteria.**

**REASON FOR DECISION:** 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. Your request for long-term care is being denied.

- 3) Lisa Goodall, a registered nurse with West Virginia Medical Institute (WVMI), testified that the Claimant had deficits in two areas: *bathing* and *dressing*.

- 4) Kelly Johnson, representative for the Department's Bureau for Medical Services, testified that the Nursing Facility Services Provider Manual, Chapter 514, contains the applicable policy pertaining to medical eligibility for Long Term Care Medicaid. From this chapter, §514.8.2 (Exhibit D-1) states, in pertinent part:

#### **514.8.2 MEDICAL ELIGIBILITY**

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. See Attachment.

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: 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 or more of 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.

- 5) -----, the Claimant's witness, testified that the Claimant would be unable to stay in the nursing home without Medicaid coverage. He speculated that without nursing facility care, the Claimant would regress until hospitalized and, ultimately, forced to return to the nursing home.

- 6) -----, the Claimant's witness from the nursing facility, testified that it was her opinion that it would be in the Claimant's best interest to remain under care at the facility.
- 7) No dispute of facts with the medical eligibility areas of the PAS were identified on the Claimant's behalf.

#### **VIII. CONCLUSION OF LAW:**

- 1) Medical eligibility for Long Term Care Medicaid requires a minimum of five deficits in functional areas. The Department identified and awarded two deficits on the Claimant's May 20, 2009, PAS. There was no dispute of the medical eligibility findings of the Department. The Department was correct to terminate Long Term Care Medicaid based on the lack of medical eligibility for the program.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's proposed termination of Long Term Care Medicaid based on medical ineligibility.

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

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision  
Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of December, 2009.**

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**Todd Thornton**  
**State Hearing Officer**