



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 1736
Romney, WV 26757

Joe Manchin III
Governor

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

September 21, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 14, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your 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 condition as of your May 7, 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 you are not medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Eric L. Phillips
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- 1488

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 September 21, 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 14, 2009 on a timely appeal filed July 9, 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
-----, Claimant's Representative
-----, Claimant's Medical Power of Attorney, Witness
-----, Witness
-----, Witness (observing offered no testimony)
Kelly Johnson, Program Manager LTC/ICFMR Facilities
Stacy Ledman, RN, Project Manager WVMH

Presiding at the hearing was Eric L. Phillips, 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 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 7, 2009
- D-3 Denial letter dated June 12, 2009
- D-4 Supporting documentation

Claimant's Exhibits

- C-1 Letter dated September 3, 2009 from Dr. Chris Que
- C-2 Summary of Claimants situation

VII. FINDINGS OF FACT:

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on May 7, 2009 to determine whether he 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 – vacating a building, orientation, and administering medications- were assigned as part of the PAS assessment.
- 3) The Claimant was notified of the denial of Long-Term Care services in a letter dated June 12, 2009 (D-3).

- 4) Claimant's representative and brother, -----, testified that Claimant suffers from seizures and dementia and at times is completely disoriented. Claimant's representative states that Claimant has been a resident of ----- for the last 5 months, and was admitted into the nursing facility after a release from hospital in April 2009. Claimant and representatives contest that deficits should be awarded for eating, bathing, wheeling. Claimant's Exhibit C-2, documents that Claimant lacks the mental capacity to be established in a self-sufficient manner and, if released from the nursing facility, Claimant would be harmful to himself, as well as others in his environment. Exhibit C-1, Physician's statement from Dr. Chris Que, reiterates Claimants condition of alcohol dementia and that Claimant demonstrates poor insight and judgment.
- 5) Claimant's representatives contend a deficit should be awarded in the area of bathing. Claimant is listed on PAS (D-2), to be a Level 1-Self/Prompting. Claimant contends that he dislikes the facility administering the bathing process and that he prefers to bathe on his own. Claimant testified that he can sit upright and bathe himself "country style".
- 6) Claimant's representatives contend a deficit should be awarded in the area of eating. Claimant is listed on PAS (D-2), to be a Level 1 Self/Prompting. It is contested that Claimant would be unable to cook for himself if he was living in his own environment, but state that Claimant does have the ability to feed himself. It is derived from testimony from the Department that the inability to cook for yourself, cannot be considered as a deficit, as the nursing facility provides all meals for residents.
- 7) Claimant's representatives contend a deficit should be awarded in the area of wheeling. Claimant's witnesses testify that when visiting Claimant at the nursing facility, Claimant is assisted by the use of a wheeling device. Testimony reveals that Claimant had fall, in which he was resuscitated by a rescue squad and spent a number of days in the hospital. Testimony also reveals that Claimants leisure activities involve smoking, and the Claimant is not allowed to participate in this activity without the assistance of a wheeling device and the assistance of a caretaker at the nursing facility.
- 8) 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 7, 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) Claimant's testimony reveals that he has the ability to bathe in an upright position. This capability to perform this function, affirms that the Level 1 Self/Prompting on the Pre-Admission Screening is justified; therefore a deficit **cannot** be awarded in the area of bathing.
- 4) The Claimant's inability to cook for himself cannot be considered when examining consideration of a substantial deficit on the Pre Admission Screening (D-2). All meals are prepared for residents of a nursing facility, and the Claimant denies needing any assistance in the area of feeding. A deficit **cannot** be awarded in the area of eating, and the Self/Prompting functionality is correctly evaluated on the Pre-Admission Screening.
- 5) The nursing facility requires Claimant to be assisted with a wheeling device/supervision while participating in leisure activities such as smoking. In order to be awarded a deficit on the function of wheeling, the individual must reflect the need for situational assistance (assistance in maneuvering

through doorways, etc). Testimony revealed that Claimant lacked the need for situational assistance, therefore a deficit **cannot** be awarded in the area contested.

- 6) Claimant was awarded deficits in the areas of vacating a building, orientation, and administration of medications. No further testimony was provided regarding the availability of any additional deficits, therefore it is the decision of the Hearings Examiner that the Department was correct in its decision to deny Long Term Care based on medical eligibility.

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 _____ day of September 2009.

**Eric L. Phillips
State Hearing Officer**

