



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Joe Manchin III  
Governor

Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

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

December 7, 2009

-----for -----

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----' hearing held November 19, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny --- -- Long-Term Care services.

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 program is based on current policy and regulations. These regulations provide 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 § 514.8.2).

The information submitted at your hearing was insufficient to establish -----' medical eligibility for the Long Term Care program.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny -----' services through the Long Term Care program.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Medical Services  
[REDACTED] Health Care Center

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1911**

**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 November 19, 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 November 19, 2009 on a timely appeal, filed September 14, 2009.

**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:**

-----, Power of Attorney for Claimant  
-----, Witness for Claimant  
-----, RN, Case Manager, [REDACTED] Health Care Center  
-----, Social Worker, [REDACTED] Health Care Center

Kelley Johnson, Bureau of Medical Services (testified by phone)  
Kim Hall, West Virginia Medical Institute (testified by phone)

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

This hearing was held by videoconference.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's decision to deny Claimant Long Term Care services 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 September 1, 2009
- D-3 Denial Notification Letter dated September 3, 2009
- D-4 Medical Documentation from Princeton Health Care Center

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) A Pre-Admission Screening form (PAS) was completed on September 1, 2009 to evaluate Claimant for Medicaid eligibility for the Long Term Care program. Claimant received deficits in the areas of bathing and medication administration (D-2). Three (3) additional deficits were required for Claimant to meet the medical criteria for Long Term Care services.
- 2) -----, Claimant's son and Power of Attorney, testified that Claimant has dementia and is unable to live alone. The stable environment provided at the nursing facility has caused improvement in her condition, but he feels a discharge would result in a relapse.
- 3) -----, case manager at [REDACTED] Health Care Facility, testified that Claimant needs structure and is unable to adapt to new situations. When Claimant's roommate was in their bathroom, Claimant became confused and urinated in the hallway. -----stated Claimant would be mentally unable to vacate the facility in an emergency. She only leaves her room for meals and would need direction on how to vacate the building if there was a fire.  
  
-----stated Claimant has bowel incontinence 2-3 times a week. Claimant has a long term problem with diarrhea which causes her to have accidents. -----stated she has helped clean her up after an accident.
- 4) -----, social worker with [REDACTED] Health Care Facility, testified to Claimant's bowel incontinence. Claimant once soiled herself because she did not know how to open the bathroom door.

5) 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) Credible testimony provided by Claimant's case manager revealed that Claimant is mentally unable to vacate the building in an emergency. -----cited several instances where Claimant was became disoriented when her routine was interrupted. A diagnosis of dementia for Claimant lends credibility to the testimony in support of her inability to vacate in an emergency. One (1) additional deficit in the area of vacating will be awarded to Claimant.
- 3) Testimony and medical documentation provided indicated Claimant has incontinence of the bowels due to chronic diarrhea. The information offered at the hearing supported Claimant's inability to reach the bathroom in time combined due to this chronic condition and her intermittent disorientation. One (1) additional deficit will be awarded in the area of continence.
- 4) With the addition of deficits in vacating and incontinence, Claimant still does not meet the medical criteria required for the Long Term Care program. One (1) more deficit was necessary for Claimant to be eligible for the program.

## **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant Medical eligibility for Long Term Care services. Deficits in vacating and continence were awarded as a result of this decision.

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

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 7<sup>th</sup> day of December 2009.**

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**Kristi Logan  
State Hearing Officer**