



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

Martha Yeager Walker
Secretary

July 9, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 2, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for a nursing facility.

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 services 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 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. (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 one (1) deficit and was correct in its determination of medical ineligibility for the program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny medical eligibility for nursing facility services.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-569

**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 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 April 2, 2009 on a timely appeal, filed January 15, 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

-----, Social Worker, [REDACTED] Village

-----, Claimant's daughter

-----, Claimant's witness

Kelley Johnson, Department Representative

Stacy Leadman, 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 Medicaid nursing facility services.

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 January 8, 2009
- D-3 Notice of Denial Determination dated January 9, 2009
- D-4 Supporting documentation

VII. FINDINGS OF FACT:

- 1) Claimant is a 79-year old female applicant for nursing facility services. A Pre-Admission Screening (PAS) form was completed on January 8, 2009 (Exhibit D-2), assessing 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 January 9, 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) Testimony from the Department confirmed that they determined the Claimant had a deficit in only one (1) area: *bathing*.
- 4) Policy from the Nursing Facility Services Provider Manual, Chapter 514, §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) Testimony on behalf of the Claimant suggested additional deficits should have been awarded in the areas of *medication administration*, *ability to vacate a building*, *orientation*, and *walking*.

Testimony indicated that when the Claimant lived with her friend, she was unable to take her own medication. The Department contended that, at the time of the PAS, she was noted as capable of *medication administration*. The social worker from the Claimant's nursing facility testified that the PAS was an accurate picture of the Claimant's abilities at the time it was completed.

With regard to the *ability to vacate a building*, the Claimant's witness testified that the Claimant is presently unable to do so. The Department explained that their eligibility determination was based on the assessment of the Claimant on January 8, 2009, and not on present conditions.

Testimony from the Claimant's witness indicated that the Claimant is "not always" oriented. The WVM RN testified that for a deficit to be awarded in the area of *orientation*, the Claimant would have to have been assessed at Level 3 – or totally disoriented to person, place, and time. At the time of the PAS, the Claimant was assessed as Level 1 – oriented, and the testimony on behalf of the Claimant described intermittent disorientation, or Level 2. The Department additionally noted that their supporting documentation (Exhibit D-4) included a Physician Determination of Capacity, dated December 13, 2008. In this document, the Claimant's physician opined that she demonstrated the mental capacity to make her own health care decisions.

With regard to the functional ability of *walking*, the Department noted that their supporting documentation (Exhibit D-4) included nurses' notes and logs of the Claimant's activities of daily living, which documented that the Claimant ambulated with a walker, while supervised, but without physical assistance. The Department noted that the deficit threshold for the area of *walking* is a Level 2, or requiring physical assistance.

VIII. CONCLUSIONS OF LAW:

- 1) Medical eligibility for Nursing Facility services requires a minimum of five (5) deficits in functional areas. The Department identified and awarded only one (1) deficit on the Claimant's January 8, 2009 PAS. Testimony on behalf of the Claimant proposed deficits in four (4) additional areas: *medication administration*, *ability to vacate a building*, *orientation*, and *walking*. The Department clearly showed that all the proposed areas were either not conditions present at the time of the PAS, or described a functional level still not severe enough to meet a deficit threshold, or were contradicted by evidence collected in the nursing facility at the time of the PAS.
- 2) With only one (1) deficit awarded at the time of the PAS and no additional deficits discovered through evidence or testimony, the Claimant has failed to demonstrate medical eligibility for the program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny medical eligibility for a Nursing Facility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of July, 2009.

Todd Thornton
State Hearing Officer