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

May 21, 2009

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 19, 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 January 2009 required a sufficient level of care to medically qualify you for participation in the Medicaid Long-Term Care Program.

It is the decision of the State Hearing Officer to **reverse** the Agency's determination that you are 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- 815**

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 May 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 May 19, 2009 on a timely appeal filed January 14, 2009. The hearing was originally scheduled for April 28, 2009, but the request was withdrawn. The hearing request was then reinstated by the Claimant and was scheduled for May 5, 2009, but was rescheduled at the request of the Department.

II. PROGRAM PURPOSE:

The program entitled **Medicaid Long-Term Care** (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Nursing Home 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:

-----[redacted] Social Service Worker II, DHHR, Claimant's guardian
Kelley Johnson, Program Manager, Bureau for Medical Services
-----, Review Nurse, 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 the hearing was conducted 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 January 5, 2009
D-3 Denial letter dated January 6, 2009
D-4 Supporting documentation

Claimant's Exhibits:
C-1 Pre-Admission Screening form completed on January 14, 2009
C-2 Pre-Admission Screening form completed on April 8, 2009
C-3 Letters from -----and -----

VII. FINDINGS OF FACT:

1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on January 5, 2009 to determine whether he meets medical eligibility requirements for the Medicaid Long-Term Care Program.

2) As a result of the assessment, the Department identified four (4) qualifying functional deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming, as well as medication administration.

3) The Claimant was sent a denial letter on January 6, 2009 (D-3) notifying him of the decision.

4) The Claimant, who is under the guardianship of -----, is mentally retarded and suffers from chronic

kidney disease. The Claimant's Social Service Worker testified that the Claimant should have received a deficit for incontinence because he is incontinent of bladder and bowel when outside of a controlled setting. While the PAS indicated that the Claimant is occasionally incontinent of bladder and bowel, the Social Service Worker provided documentation from two of the Claimant's former care providers (C-3).

A letter from -----, dated January 28, 2009, indicates that the Claimant would "wet & dirty himself because he didn't want to get up and go to the bathroom. Nearly everyday he wet himself." The letter goes on to state:

> There were times he would have fecal matter on commode seat, back of commode, wall, sink, toilet paper roll & holder when using the bathroom. He used so much toilet paper that he constantly had the commode plugged up. After ----- was gone, I found toilet paper that he had used to wipe himself with, stuff [sic] behind items and in containers in other rooms of my home. When showering he would soap his face & head with the wash rag and then do his back end and then with fecal matter on his wash rag he'd want to go back to his face.

A second letter from -----, dated February 1, 2009, states that the Claimant resided in -----' home from October 2008 through January 12, 2009. ----- wrote:

> While he was living with us we had to clean up after him. He would go to the bathroom and we had to clean up urine & feces off the floor, wall and toilet.

----- also wrote that the Claimant defecated in the shower and urinated while sitting in chairs.

The Department's representatives did not refute the Social Worker's evidence.

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 administrating 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 January 5, 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 Medicaid Long-Term Care, an individual must have a minimum of five (5) qualifying functional deficits on the PAS. These deficits are derived from a combination of assessment elements on the medical evaluation. The Claimant was awarded four (4) qualifying deficits on his PAS assessment.

3) Based on information presented during the hearing, one (1) additional deficit is awarded in the area of continence. This brings the Claimant's total number of functional deficits to five (5). It is apparent that the Claimant had frequent bladder and bowel accidents at the time of the January PAS as confirmed in documentation from his former caretakers.

4) The Department's January 2009 decision to deny the Claimant's Medicaid Long-Term Care benefits due to medical ineligibility is incorrect.

IX. DECISION:

It is the ruling of the State Hearing Officer to **reverse** 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 21st day of May, 2009.

_____

Pamela L. Hinzman
State Hearing Officer