



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

April 21, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 15, 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 December 2008 medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify you 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 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- 817

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 April 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 April 15, 2009 on a timely appeal filed March 4, 2009.

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:

-----, Claimant
-----, Claimant's brother

Telephonic participants

Kelly Johnson, Program Manager- LTC/ICF-MR Program, Bureau for Medical Services
-----, Nurse Case Manager, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

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 December 23, 2008
- D-3 Denial letter dated January 23, 2009
- D-4 Supporting documentation

VII. FINDINGS OF FACT:

- 1) A Pre-Admission Screening (PAS) medical evaluation (D-2) was completed for the Claimant on December 23, 2008 to determine whether he meets medical eligibility requirements for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute representative testified that one (1) qualifying functional deficit – physical assistance with bathing - was identified for the Claimant as a result of the PAS assessment.
- 3) The Claimant was notified of the denial of Long-Term Care services in a letter dated January 23, 2009 (D-3).
- 4) The Claimant and his brother testified that the Claimant suffers from seizures and can become disoriented following the seizures. The Department's representatives explained that an individual must be totally disoriented or comatose in order to receive a deficit in this area. In addition, the Claimant and his brother testified that the Claimant is occasionally incontinent and needs some assistance with medication administration. The Claimant had been rated as continent of both bowel and bladder on the PAS and the Department's representatives noted that an individual must be totally incontinent to receive a deficit in this area. The Claimant was rated as requiring

prompting/supervision with medication administration on the PAS, which is an accurate assessment based on information provided during the hearing. It should be noted that an individual must be mentally and/or physically incapable of taking medication in order to receive a deficit in this area.

The Claimant and his brother provided information concerning the Claimant's need for physical assistance with dressing and his inability to vacate from his current third floor residence in the event of an emergency. However, consideration of potential deficits in these areas would be moot as the addition of two (2) deficits would only bring the Claimant's total deficits to three (3) and he would continue to lack the required five (5) deficits required for eligibility.

The Claimant's brother indicated he would like to acquire space for the Claimant in an assisted living facility.

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 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.
- 2) Policy holds that to medically qualify for Long-Term Care benefits, 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. Evidence reveals that a PAS was completed for the Claimant on December 23, 2008 and it was determined that he is medically ineligible for Medicaid Long-Term Care Services. The Claimant's PAS revealed that he exhibits one (1) qualifying deficit in the areas of functional limitation.
- 3) While the Claimant may potentially qualify for deficits in physical assistance with dressing and inability to vacate in the event of an emergency, awarding deficits in these areas would be moot as the Claimant would continue to lack the required five (5) deficits for Long-Term Care eligibility.
- 4) The Department's decision to deny the Claimant's Medicaid Long-Term Care benefits due to medical ineligibility is correct.

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 21st day of April, 2009.

Pamela L. Hinzman
State Hearing Officer