



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

August 19, 2010

-----for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 21, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny ----- services under the Long Term Care Medicaid program.

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 to qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, seven 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 Medicaid applicants. An individual must have a minimum of five deficits identified on the PAS in order to qualify for the Medicaid nursing facility benefit (Nursing Facility Services Provider Manual Chapter 514).

The information which was submitted at your hearing revealed that ----- has deficits in bathing and vacating in an emergency and therefore meets the medical criteria for eligibility for Long Term Care services.

It is the decision of the State Hearings Officer to **Reverse** the action of the Department to deny ----- Long Term Care Medicaid.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Bureau of Medical Services

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

-----,

Claimant,

v.

Action Number: 10-BOR-1490

**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 21, 2010 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.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care is administered by the West Virginia Department of Health & Human Resources.

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:

-----, Attorney in Fact for Claimant

-----, Witness for Claimant

-----, Witness for Claimant

Kelly -----son, Bureau of Medical Services

Barbara Green, RN, West Virginia Medical Institute

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

All participants testified by phone.

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 was correct.

V. APPLICABLE POLICY:

Nursing Facility Manual § 514.8

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Nursing Facility Manual § 514.8
- D-2 Pre-Admission Screening Form dated May 26, 2010
- D-3 Denial Notification Letter dated June 2, 2010
- D-4 Medication Log, Minimum Date Set dated March 29, 2010 and Medical Records from [REDACTED] General Hospital dated February 17, 2010

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) An application for Long Term Care Medicaid was made on Claimant's behalf in May 2010. A Pre-Admission Screening form (PAS) was completed on May 26, 2010. Claimant was awarded deficits in the areas of grooming, dressing and medication administration (D-2). Two (2) additional deficits were required for Claimant to be medically eligible for Long Term Care services.
- 2) -----, Claimant's nephew and Attorney in Fact, testified that they contested Claimant not receiving deficits in the areas of orientation, bathing and vacating in an emergency.

-----stated that Claimant's condition is deteriorating and he would be unable to live alone. -----stated Claimant has seizures and had one as recently as March 2010. He stated Claimant also has intermittent disorientation and feels Claimant would be unable to vacate in an emergency without assistance.

-----stated the last time he visited Claimant in 2009; his clothes were filthy with urine and feces. Because of this, ----- believes Claimant requires assistance with bathing.

- 3) -----, Claimant's niece, testified that she too has seen Claimant dirty with his own urine and feces. ----- stated Claimant's ability to make it to the bathroom is deteriorating and due to his disorientation, Claimant is unable to bathe himself. ----- stated Claimant has a history of a stroke and seizures and would need assistance to vacate in an emergency (D-4).
- 4) -----, Claimant's landlord, testified to Claimant's orientation. ----- stated she has been Claimant's landlord since 2001 and she often saw him unkempt and dirty. ----- stated Claimant's house was filthy and she felt he could not care for himself. ----- stated Claimant has been very disoriented in the last three (3) years.
- 5) The Minimum Data Set (MDS) completed in Claimant in March 2010 indicated the following regarding Claimant's daily living activities (D-4):

Bathing: Physical help in part of bathing activity, one person physical assist

Test for Balance: Not able to attempt without physical assistance (while standing), unsteady but able to rebalance self without physical support (while sitting)

Modes of Locomotion: Wheelchair primary modes of locomotion, wheeled self

- 6) Nursing Facility Services Manual § 514.8.2 states:

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.

VIII. CONCLUSIONS OF LAW:

- 1) To qualify medically for Long Term Care Medicaid, an individual must have at least five (5) functional deficits. Claimant received deficits in grooming, dressing and medication administration as a result of the PAS completed in May 2010.
- 2) Based on the documentation provided, Claimant requires physical assistance with bathing. Claimant was rated as Level 1, self/prompting on the PAS. Claimant clearly should have been rated as Level 2, physical assistance. Claimant shall be awarded a deficit in the area of bathing.
- 3) The testimony provided indicated Claimant has intermittent bouts of disorientation. While Claimant cannot be awarded a deficit in orientation unless he was totally disoriented, his confusion could hinder his ability to vacate in an emergency. Additionally, Claimant's mobility is limited to that of a wheelchair. It is reasonable to believe Claimant would require assistance in vacating with the aforementioned impediments. Claimant shall be awarded a deficit in the area of vacating in an emergency.
- 4) With the addition of deficits in bathing and vacating, Claimant meets the medical criteria as set forth in policy to qualify for Long Term Care services.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny Claimant Long Term Care Medicaid. Claimant will be awarded deficits in bathing and vacating in an emergency.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th day of August 2010.

**Kristi Logan
State Hearing Officer
Member, Board of Review**