



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Joe Manchin III
Governor

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

April 5, 2010

-----For: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----' hearing held October 29, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of Long Term Care Medicaid based on 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.

The determination of medical eligibility for Long Term Care Medicaid is based on current policy and regulations. These regulations state that to qualify medically for the nursing facility Medicaid benefit, an individual must need full-time direct nursing care. 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 submitted at -----hearing revealed that the Department was correct in its assessment of three deficits and was correct in its determination of medical ineligibility for the program.

It is the decision of the State Hearing Officer to **uphold** the Department's denial of Long Term Care Medicaid based on unmet medical eligibility.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Lorna Harris, WV Bureau of Medical Services

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

-----,

Claimant,

v.

Action Number: 09-BOR-1801

**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 April 5, 2010 for -----. The DHHR Board of Review held this hearing in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. The Board of Review convened this fair hearing on October 29, 2009 on a timely appeal, filed August 31, 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's representative
Nora McQuain, Department Representative, Bureau of Medical Services
Lisa Goodall, RN, Department Representative, WV Medical Institute (WVMI)

All participants met via the LeaderPhone teleconferencing service.

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided was whether the Department was correct in its determination that the Claimant was not medically eligible for Long Term Care Medicaid based on a Pre-Admission Screening conducted on August 12, 2009.

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 August 12, 2009
- D-3 Notice of Denial Determination dated August 19, 2009

VII. FINDINGS OF FACT:

- 1) Claimant is a 66-year old male applicant for Long Term Care Medicaid, residing at [REDACTED] Hospital, a facility for mentally disabled individuals in [REDACTED] WV. A Pre-Admission Screening (PAS) form was completed on August 12, 2009 (Exhibit D-2) to reassess the Claimant's medical eligibility for nursing facility services.
- 2) Nora McQuain, representative for the Department's Bureau for Medical Services, testified that the Nursing Facility Services Provider Manual, Chapter 514, contains the applicable policy pertaining to medical eligibility for Long Term Care Medicaid. From this chapter, §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.

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.

- 3) Lisa Goodall, a registered nurse with West Virginia Medical Institute (WVMI), testified that the Claimant had deficits in three areas: *eating, bathing and dressing*.
- 4) The Department issued a Notice of Denial Determination (Exhibit D-3) to the Claimant on or about June 15, 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.

- 5) Claimant's representative testified that Claimant has deteriorated since the PAS was completed in August, 2009. She stated that his incontinence was much worse, to the extent that he has no control over bowel and bladder. She testified that he is completely diaper-dependent. She testified that if he dresses himself, he often cannot dress himself

properly. He may put on a shirt backwards or stick an arm through the neck opening of a pullover. She stated Claimant had a stroke about four to five months before the August 2009 PAS, and began deteriorating rapidly after that event.

VIII. CONCLUSION OF LAW:

Medical eligibility for Long Term Care Medicaid requires a minimum of five deficits in functional areas. The Department identified and awarded three deficits on the Claimant's August 12, 2009, PAS. The purpose of this hearing and decision is to determine if the Department correctly followed policy in denying Claimant's application for Long Term Care Medicaid based on the August 2009 PAS. Any deterioration of Claimant's mental or physical health that may have occurred since then is beyond the scope of this decision. The Department was correct to terminate Long Term Care Medicaid based on the lack of medical eligibility for the program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposed termination of Long Term Care Medicaid based on medical ineligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of April, 2010.

Stephen M. Baisden
State Hearing Officer