



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 21, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 19, 2009. Your hearing request was based on the Department of Health and Human Resources' termination 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 your hearing revealed that the Department was correct in its assessment of two 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 proposed termination 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, Bureau of Medical Services

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

-----, Claimant,

v.

Action Number: 09-BOR-1851

**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 20, 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 November 19, 2009 on a timely appeal, filed September 4, 2009.

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
-----, Claimant's Witness
-----, Claimant's Witness

Kelley Johnson, Department Representative, WV Bureau of Medical Services
Kim Hall, RN, Department Witness, WV Medical Institute (WVMI)

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

All participants participated by conference call.

The hearing officer placed under oath all persons offering testimony.

IV. QUESTION TO BE DECIDED:

The question to be decided was whether the Department was correct in its determination that the Claimant was medically ineligible for Long Term Care Medicaid.

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 26, 2009
- D-3 Notice of Denial Determination dated August 31, 2009
- D-4 Supporting documentation

VII. FINDINGS OF FACT:

- 1) Claimant is a 70-year old female resident of Heartland of [REDACTED] a nursing facility near [REDACTED]. Medical staff at Heartland completed a Pre-Admission Screening (PAS) form on August 26, 2009 (Exhibit D-2) to assess the Claimant's medical eligibility for nursing facility services in West Virginia.
- 2) Kelly Johnson, 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:

514.8.1 APPLICATION PROCEDURE

An application for nursing facility benefits may be requested by the resident, the family/representative, the physician, or a health care facility. The steps involved in approval for payment of nursing facility services are:

- The application for NF service is made to the local DHHR office. The determination of financial eligibility for Medicaid is the responsibility of the local office; and
- The medical eligibility determination is the responsibility of the Bureau for Medical Services based on a physician's assessment of the medical and physical needs of the individual. This assessment must have a physician's signature dated not more than sixty days prior to the start of services.

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.

- 3) Department's witness, a registered nurse with West Virginia Medical Institute (WVMI), testified that the Claimant had deficits in two areas: *bathing* and *administering medication*.
- 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 witness, a social worker at Heartland of [REDACTED] testified that she had submitted a corrected PAS with a different rating under item #26: *Walking*. The witness stated that Claimant should have been rated at level 2 for walking, which means that Claimant can walk with Supervision and/or an assistive device. Department's representative and witness stated that they did not receive a corrected PAS, and even if they had, a rating of level 2 for walking is not sufficient to receive a deficit in this area.
- 6) Claimant stated that her reason for applying for Long-Term Care benefits in West Virginia was that she wanted to move back to her home area. Claimant's second witness reiterated her wish to move back to West Virginia. Neither Claimant nor her witnesses offered evidence or testimony sufficient to substantiate a finding of additional deficits.

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 two deficits on the Claimant's August 26, 2009, PAS. There was no testimony or evidence sufficient to substantiate findings of additional deficits for the Department. 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 21st Day of April, 2010.

Stephen M. Baisden
State Hearing Officer