



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

January 4, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 4, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to deny you Long Term Care services.

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 an individual must have a minimum of five (5) deficits identified on the Pre-Admission Screening form in order to qualify for the nursing facility care (Nursing Facility Services Policy Manual § 514.8.2).

The information submitted at your hearing revealed that you do not meet the medical criteria as required by policy to receive Long Term Care services.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to deny you services under the Long Term Care program.

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: 09-BOR-2021

**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 December 4, 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 December 4, 2009 on a timely appeal, filed October 7, 2009.

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:

-----, Claimant

-----, Witness for Claimant

-----, ASO In-Home Provider

-----, Social Worker, [REDACTED] Center (testified by phone)

-----, Director of Nursing [REDACTED] Center (testified by phone)

Kelley Johnson, Bureau of Medical Services (testified by phone)
Julie Romero, RN, West Virginia Medical Institute (testified by phone)

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

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 is correct.

V. APPLICABLE POLICY:

Nursing Facility Services Policy Manual § 514.8 – 514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Nursing Facility Services Policy Manual § 514.8 – 514.8.2
- D-2 Pre-Admission Screening Form dated September 17, 2009
- D-3 Denial Notification Letter dated October 9, 2009
- D-4 Medical Records from [REDACTED] Center

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A Pre-Admission Screening form (PAS) was completed on September 17, 2009 to evaluate Claimant for Medicaid eligibility for the Long Term Care program. Claimant received a deficit in the area of medication administration (D-2). Four (4) additional deficits were required for Claimant to meet the medical criteria for Long Term Care services.
- 2) -----, Claimant's mother, testified that Claimant has Traumatic Brain Injury and is unable to live alone. -----stated Claimant is forgetful, compulsive and has no sense of safety. She stated her daughter is often confused and has memory problems.

-----testified that Claimant is incontinent of the bladder. She stated Claimant wears diapers all the time because she cannot make it to the bathroom.

- 3) -----, Claimant's ASO in-home provider, testified that Claimant has been declared incompetent and her mother is her legal guardian. -----stated Claimant is a danger to herself and cannot live alone.

-----stated Claimant has an open Child Protective Services case and her children live with ----- . There are no programs available for Claimant's condition and she cannot reside with her mother as she is not allowed to be around her children.

- 4) -----, social worker at the [REDACTED] Center, testified that Claimant has periodic bladder incontinence. Claimant is on a voiding program where they take her to the bathroom at set times.
- 5) -----, director of nursing at the [REDACTED] Center, testified that Claimant wears underwear sometimes. ----- could not comment on the frequency of Claimant's bladder incontinence. She stated Claimant has access to incontinence supplies and will change herself if she has an accident. ----- stated Claimant could possibly be having accidents daily.
- 6) Claimant gave testimony that she has had bladder accidents daily for the last six (6) months. She changes herself when she has an accident. Claimant stated she felt the [REDACTED] Center had nothing more to offer her and she wants to live alone.
- 7) Nursing Facility Services Policy Manual § 514.8.2 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) Policy dictates that to qualify medically for Long Term Care Medicaid, an individual must have a minimum of five (5) functional deficits on the PAS. Claimant was awarded one (1) qualifying deficit on her PAS assessment.
- 2) Credible testimony from Claimant and her mother revealed Claimant has bladder incontinence. Testimony from the director of nursing at the [REDACTED] Center gave credence to Claimant's incontinence as Claimant is able to change herself after an accident without alerting the nursing staff. A deficit for incontinence will be awarded Claimant.
- 3) With the addition of a deficit in incontinence, three (3) more deficits are necessary for Claimant to be medically eligible for the Long Term Care program. The Department correctly denied Claimant services under the Long Term Care program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant Long Term Care services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th day of January 2010.

**Kristi Logan
State Hearing Officer**