



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General**

**Joe Manchin III  
Governor**

**Board of Review  
P.O. Box 1736  
Romney, WV 26757**

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

March 1, 2010

----- and -----  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 17, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your father's application for benefits and services 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)

The information which was submitted at your hearing revealed that your father's condition as of his November 11, 2009 medical evaluation did not require a sufficient level of care (five functional deficits) to medically qualify 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 your brother is medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Lorna Harris, BMS

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-2411**

**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 March 1, 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. This fair hearing was convened on February 17, 2010 on a timely appeal, filed December 18, 2009.

**II. PROGRAM PURPOSE:**

Medicaid Long-Term 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's son  
Kelly Johnston, BMS  
Jenny Craft, RN, WVM I

Presiding at the Hearing was Eric L. Phillips, 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 Claimant is medically eligible for the Medicaid Long-Term Care Program.

**V. APPLICABLE POLICY:**

West Virginia Medicaid Manual Sections 514.8.1 and 514.8.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 West Virginia Medicaid Manual Sections 514.8.1 and 514.8.2
- D-2 Pre-Admission Screening dated November 11, 2009
- D-3 Notice of Denial dated December 18, 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 November 11, 2009 to determine whether the Claimant meets medical eligibility requirements for the Medicaid Long-Term Care Program.
- 2) Testimony from Kelly Johnston, BMS, indicated that the Claimant's initial PAS was valid for a period of sixty days and has since expired. If Claimant is approved for benefits and services under program guidelines an additional PAS must be completed before admission into a nursing facility.
- 3) The West Virginia Medical Institute (WVMI) representative testified that four (4) qualifying functional deficits-physical assistance with bathing, grooming, dressing, and the inability to administer medication-were indentified for the Claimant as a result of the PAS assessment completed November 11, 2009.
- 4) The Claimant was notified of the denial of Long-Term Care services in a letter dated December 18, 2009. Exhibit D-3, documents in pertinent part:

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. The PAS (Pre-Admission Screening Form), reflected deficits that meet the severity criteria in the areas of bathing, grooming, dressing and administering medication.

- 5) -----, the Claimant's representative and son, testified that his father is in need of nursing facility services. He stated that he currently resides with his father and he must leave the country for employment and his father will need someone to care for him. Testimony from ----- revealed that his father's condition has deteriorated since the time of the original PAS assessment and that he is currently seeking an additional assessment. -----'s testimony described difficulties in the areas of eating, transferring, and incontinence.

Eating-Testimony revealed that -----'s diagnosis of Alzheimer disorder requires him to be supervised on a consistent basis. The Claimant's representative testified that his father can feed himself but his intake of food must be supervised. The Claimant does not have any difficulties in feeding himself; therefore a deficit cannot be awarded in this area.

Transferring-The Claimant's representative testified that his father is obese and suffers from some knee problems and that he sometimes requires assistance transferring out of a seated position. The Claimant was evaluated as a Level II on his PAS assessment requiring supervision and assistive device. At the time of the assessment the Claimant did not require consistent physical assistance in the area of transferring and a deficit cannot be awarded in this area.

Incontinence----- ----- indicated that his father has bladder accidents on a regular basis. The supporting documentation (Exhibit D-4) documented a concern regarding the Claimant's urgency and urination issues. This documentation did not list any incontinence issues and the physician completing the assessment documented the Claimant as having occasional incontinence. The Claimant did not meet the required definition of being incontinent; therefore a deficit cannot be awarded in this area.

- 6) 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 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 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 designees (West Virginia Medical Institute) for medical necessity review. Evidence reveals that a PAS was completed on November 11, 2009 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care services.
- 2) Policy holds that to medically qualify for Long-Term Care, 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. The Claimant's PAS revealed three (3) qualifying deficits in the area of functional limitation.
- 3) Based on information provided during the hearing, no additional deficits can be awarded.

**IX. DECISION:**

It is the decision 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 \_\_\_\_\_ day of March 1, 2010.**

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**Eric L. Phillips  
State Hearing Officer**