



**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

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 24, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your benefits 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 condition as of your December 21, 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 action of the Department to deny your medical eligibility 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: 10-BOR-658

**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 24, 2010 on a timely appeal, filed January 19, 2010.

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 and daughter
Nora McQuain, RN, BMS
Joyce Romeo, RN, WVMI

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 Chapter 514, Sections 514.8.1-514.8.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Medicaid Manual Chapter 514, Sections 513.8.1-514.82
- D-2 Pre-Admission Screening dated December 21, 2009
- D-3 Notice of Denial dated January 6, 2010

VII. FINDINGS OF FACT:

- 1) A Pre-Admission Screening (PAS) medical evaluation (Exhibit D-2) was completed for the Claimant on December 21, 2009 to determine whether the Claimant meets medical eligibility requirements for the Medicaid Long-Term Care Program.
- 2) The West Virginia Medical Institute (WVMI) representative testified that three (3) qualifying functional deficits-grooming, dressing, and administering medications were identified for the Claimant as a result of the PAS assessment.
- 3) The Claimant was notified of the denial of Long-Term Care services in a letter dated January 6, 2010. This letter 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 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 deficiencies that meet the severity criteria in 3 areas-grooming, dressing, and administering medications.

- 4) -----, the Claimant's representative and daughter testified that additional deficits should have been awarded in the areas of eating, bathing, continence, and orientation. Additionally, the

Claimant's representative testified that an additional PAS was submitted on January 22, 2010. All testimony and evidence relates to the PAS administered on December 21, 2009.

The following address the contested deficits:

Eating-Testimony from the Claimant's representative indicated that the Claimant's mental state contributed to her difficulties in locating ingredients to prepare food. Testimony indicated that the Claimant required assistance in the preparation of meals but did not require assistance in eating or cutting up foods. Representatives from the Department testified that a deficit can be awarded when an individual requires assistance in ingesting food or nutrition (feeding tube) or assistance to cut up foods. Testimony from the Claimant's representative indicated that the Claimant could feed herself and did not require assistance to cut up meals just in preparation. Based on testimony, a deficit cannot be awarded in the contested area of eating.

Orientation-The Claimant's representative testified that the Claimant has some disorientation and that she cannot hold a conversation with others as her, "words don't make sense". The Claimant was listed on the PAS (Exhibit D-2) as Intermittent Disorientation. The Department representatives testified that a deficit can be awarded when an individual is totally disoriented to person, place, and time. Testimony from the Claimant's representative indicated intermittent disorientation; therefore a deficit **cannot** be awarded in the contested area of orientation.

Bathing-The Claimant's representative indicated that the Claimant required assistance in the area of bathing. Testimony revealed that the Claimant requires assistance in transferring in and out of the bathtub. Testimony indicated that the Claimant can bathe herself but she requires assistance in being informed of which areas to wash and when to wash them. The Department's representatives testified that the Claimant was assessed as a Level 1 and a deficit is awarded when the individual requires physical assistance. Testimony revealed that the Claimant requires hands on assistance in transferring in and out of the bathtub as well as assistance in guiding her in her functional abilities to bath herself. The assistance in bathing meets the requirements of physical assistance therefore a deficit **can be** awarded in the contested area.

Continence-Testimony indicated that the Claimant does wear diapers and that the Claimant experiences occasional accidents. The Claimant's representative stated that her mother can use the restroom when she "has the urge to go". The Department representatives identified that a deficit shall be awarded when an individual is assessed as incontinent and having more than three episodes of incontinence a week. Testimony from the Claimant's representative did not indicate a frequency of her mother's incontinence; therefore the Claimant was correctly assessed with occasional incontinence and a deficit **cannot** be awarded in the contested area.

- 5) 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 designee (West Virginia Medical Institute) for medical necessity review. Evidence reveals that a PAS was completed on December 21, 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 areas of functional limitation.
- 3) Based on information provided during the hearing, one additional deficit can be awarded in the area of bathing. The Claimant's total functional deficits stand at four; therefore the Department was correct in its action to deny medical eligibility for the Medicaid Long-Term Care Program.

IX. DECISION:

It is the ruling 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 2010.

Eric L. Phillips
State Hearing Officer