State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

February 17, 2012

Dear ----------:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on February 16, 2012. Your hearing request was based on the Department of Health and Human Resources' termination of medical eligibility for Long Term Care Nursing Home Medicaid.

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 Nursing Home Medicaid is based on current policy and regulations. These regulations state that in order to qualify medically for the nursing facility benefits, 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 determination of your 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 Nursing Home Medicaid based on medical ineligibility.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Amy Workman, Bureau of Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

IN RE: ----------,

Claimant,

v. **Action Number: 11-BOR-2577**

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 for ----------. The DHHR Board of Review held this hearing in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. The Board of Review convened this fair hearing on February 16, 2012.

II. PROGRAM PURPOSE:

The program entitled Long Term Care Medicaid (nursing facility services) is a medical service that is covered by the State's Medicaid Program. Payment for care is made to nursing homes that 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
----------, Claimant's witness

Kelley Johnson, Department's representative
Stephanie Schiefer, Department's witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

The Hearing Officer conducted the hearing via telephone conference call.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its determination that the Claimant is 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 October 26, 2011
D-3 Notice of Denial dated October 26, 2011
D-3 Supporting documentation from Nursing Home records

Claimant's Exhibits

None

VII. FINDINGS OF FACT:

1) The Claimant is a 49-year old female resident of [redacted] Health Care Services of [redacted] located at [redacted], West Virginia. Qualified medical staff at the nursing home completed a Pre-Admission Screening, hereinafter PAS, assessment (D-2) on October 26, 2011, to determine whether the Claimant continued to be medically eligible for nursing facility services. The Claimant's physician signed the PAS certifying that to the best of his knowledge the Claimant's medical and related needs are essentially as indicate on the PAS.

2) ---------- is a Social Worker at [redacted] Health Care Services of [redacted]. She stated that the Claimant was admitted on or about September 21, 2011, at which time a PAS was completed. She added that the Claimant established five (5) deficits at that time and was subsequently determined medically eligible for the program. She explained that the Claimant's functional levels improved dramatically after admission, and as a result, the

nursing facility conducted another PAS on October 26, 2011, to determine if the Claimant continued to meet the medical criteria for the program.

3) The Department's representative 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 (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.

4) Stephanie Schiefer is a Registered Nurse with West Virginia Medical Institute (WVMI). She testified that she reviewed the PAS assessment (D-2) completed for the Claimant on October 26, 2011, and that she determined from the information that the Claimant established a deficit in one (1) area, that being administering medications. The Claimant will need four (4) additional deficits in order to establish medical eligibility for the program.

5) The Department issued a Notice of Denial Determination (D-3) to the Claimant on or about October 26, 2011. 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 West Virginia Medical Institute (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 DENIAL:** Eligibility for long-term care placement being funded by West Virginia 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; thus your request for long-term care (nursing home) is being denied. The PAS (Pre-Admission Screening Form) reflected deficiencies that meet the severity criteria in one (1) area identified below.
>
> Administering Medications

6) ---------- is a Child Protective Services worker for the [redacted] County Department of Health and Human Resources' [DHHR] office in [redacted] West Virginia. She stated that she became involved with the Claimant's situation prior to her entering the nursing

facility, during September 2011, when the Claimant's daughter brought her to the [redacted] DHHR office suffering from severe disorientation. She stated that the Claimant "had no clue what was going on at that point." She added that the Claimant has no support at home, and that she surmised that the Claimant became disoriented because she was not taking her medications correctly. She added that in anticipation of the Claimant being discharged from the nursing facility, staff from the [redacted] DHHR has tried to locate a safe home for the Claimant outside the nursing facility; however, she added that they have exhausted their resources without locating a safe place for the Claimant to live. She stated that "we" [meaning staff from the [redacted] DHHR] are filing a court action for guardianship in the near future because she has determined that it will not be safe for the Claimant to return to her home. She stated that she is aware that the Claimant has improved during the one (1) month that she has been in the nursing facility. She pointed out that just one (1) month prior, the Claimant established at least five (5) deficits, including the functional areas of vacating, bathing, dressing and grooming; however, she was unable to provide information in support of additional deficits for the Claimant as of the October 26, 2011 PAS assessment timeframe.

7) ---------- is an Adult Protective Services worker in the [redacted] DHHR office, and is the Claimant's Health Care Surrogate. She stated that she has concerns for the Claimant should she be discharged because she has no support in the community. She stated that the Claimant's daughter related to her that the Claimant was taking her medication other than as prescribed and that she was exhibiting mental health issues during September 2011 prior to entering the nursing facility. She agreed that the Claimant has improved significantly since being in the nursing facility, but expressed concerns for her safety should she be discharged. She identified two (2) additional areas that she believed the Claimant should have received deficits, that being vacating and incontinence; however, she could not identify the needed four (4) functional areas. She offered that she believed the Claimant would be unable to vacate the facility in an emergency due to mental health issues. She offered that the Claimant's daughter told her that the Claimant was having incontinence issues, although she had not observed this herself.

8) The Claimant testified that she is able to take her own medications, and that she can feed, dress, and groom herself.

9) The Department's evidence (D-4) shows that the Claimant was functioning unassisted with her Activities of Daily Living (ADL) during the timeframe that the October 2011 PAS was completed, which is consistent with the PAS findings.

VIII. CONCLUSION OF LAW:

1) Medical eligibility for Long Term Care Medicaid requires a minimum of five (5) deficits in functional areas. The Department identified and awarded one (1) deficit on the Claimant's October 26, 2011 PAS. There was insufficient testimony and evidence to substantiate findings of four (4) additional deficits for the Claimant. The Claimant testified that she could perform

her ADL's without physical assistance. The Department's written evidence (D-4) corroborates the Claimant's testimony.

2) Although the Claimant's advocates raised issues of concern for her safety should she be discharged from the nursing facility, this particular hearing is not the venue to make that argument. The issue before the Board of Review at this time is whether the Claimant meets the medical eligibility criteria for Long Term Care Medicaid.

3) 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 17th Day of February, 2012.

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Cheryl Henson
State Hearing Officer