State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

April 17, 2012

---- ---- ---- ----

Dear ---- ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your son's hearing held April 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your medical eligibility for Long-Term Care admission.

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 direct nursing care twenty-four hours a day, seven 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 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 which was submitted at your son's hearing revealed that he does not meet the medical eligibility requirements for the Long Term Care program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny your son's Long Term Care admission based on medical eligibility.

Sincerely,

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

cc: Erika Young-Chairman, Board of Review
Kelly Johnson-Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

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

Claimant,

v. **ACTION NO.: 12-BOR-900**

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 ---- ----. 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 a timely appeal, filed March 5, 2012.

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:

---- ----, Attorney-In-Fact
---- ----, Claimant's sister

Kelley Johnson, Program Manager-Long Term Care-Bureau of Medical Services (BMS)
Karen Keaton, RN West Virginia Medical Institute (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 Department was correct in its decision to deny the Claimant's medical eligibility for Medicaid Long-Term Care admission.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual Chapter 514

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Pre-Admission Screening Assessment dated February 20, 2012
D-2 Notice of Denial for Long-Term Care dated February 22, 2012
D-3 Letter from [redacted] Manor dated March 14, 2012
D-4 Bureau for Medical Services Provider Manual Chapter 514

Claimants' Exhibits:

C-1 Letter from ---- ----, M.D.

VII. FINDINGS OF FACT:

1) On February 20, 2012, Exhibit D-1, Pre-Admission Screening Assessment, hereinafter PAS, was forwarded to West Virginia Medical Institute, hereinafter WVMI, by [redacted] Manor, in order to determine the Claimant's medical eligibility for Long-Term Care Medicaid assistance.

2) On February 22, 2012, the Department issued the Claimant Exhibit D-2, Notice of Denial informing him that his request for Long-Term Care admission had been denied. This exhibit 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 West Virginia Medical Institute (WVMI) on the Pre-Screen 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 five (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 two areas-Bathing and Administering Medications.

3) Ms. Karen Keaton, RN, WVMI confirmed that two qualifying deficits were awarded to the Claimant as a result of the PAS assessment completed by ---- ----, M.D. The Claimant was awarded deficits in the areas of bathing and administering medications.

4) The Claimant's representatives contend that additional deficits should have been awarded in the areas of orientation, bathing, grooming, dressing, eating, skilled needs, and vacating.

The following addresses the contested areas:

Orientation-The Claimant's representatives provided Exhibit C-1, Letter from ---- ----, M.D. dated March 7, 2012 which demonstrates the Claimant's overall condition since the completed PAS assessment. Exhibit C-1 documents in pertinent part:

> He is taking consideration patient's [sic] current medical condition and review of his long-term care placement. His orientation comes and goes. He is found to be [sic] have episodes of confusion with wandering. This would make it difficult for him to vacate the building and would need assistance.

---- ----, Claimant's sister indicated that her brother was intermittently disoriented at the time his physician completed the March 7, 2012 letter, but his condition has now deteriorated to the point in which he suffers from continuous confusion.

Policy requires that a deficit is awarded in the area of orientation when the individual is assessed at a Level 3 or higher meaning they are totally disoriented or comatose. During the assessment, the physician assessed the Claimant as intermittently disoriented and testimony revealed that the Claimant's condition has worsened since the completed assessment. There was no indication that the Claimant was totally disorientated at the time of the assessment; therefore, an additional deficit in the contested area cannot be established.

Grooming and Dressing- ---- ----indicated that her brother can no longer groom himself and a Hospice Aide routinely assists him with his grooming and bathing needs. Exhibit C-1 documents that "He [Claimant] is also now needing full assistance in grooming and dressing himself on a daily basis."

Policy requires that a deficit is awarded in the areas of grooming and dressing when the individual is assessed as a Level 2 or higher meaning they require physical assistance in the functional area. During the assessment, the Claimant was assessed at a Level 1 as able to

participate in his ability to groom and dress himself. Evidence and testimony revealed that the Claimant now requires grooming and dressing on a daily basis. Because the Claimant was able to participate in the functional area at the time of the assessment, a deficit in the contested areas cannot be awarded.

Eating- ---- ---- indicated that her son has difficulties with eating because he becomes confused at the dinner table and does not recognize food or remember names for certain items.

Policy requires that a deficit is awarded in the area of eating when the individual is assessed at a Level 2 or higher meaning that the individual requires physical assistance to obtain nourishment. There was no indication that the Claimant required physical assistance to obtain nourishment; therefore a deficit in the contested area cannot be established.

Skilled Needs- ---- ---- indicated that her brother will undergo a Paracentisis, in order to remove excess fluid from his abdomen. ---- ---- stated that her brother may have a port inserted into his abdomen to assist with the irrigation of the fluid.

Policy reveals that a deficit is awarded for Professional and Technical Care Needs when the individual requires assistance with suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings or irrigations. The physician did not indicate that the Claimant required assistance of any Professional or Technical Need area on the PAS assessment. Testimony indicated that the Claimant has the potential for a port to be inserted to remove excess fluid from his abdomen. During the PAS assessment, the Claimant did not require any assistance with irrigations under the Professional and Technical Needs; therefore, a deficit under this criteria cannot be established.

Vacating-The Claimant's representatives contend that the Claimant is physically and mentally incapable of vacating during an emergency. ---- ---- indicated that her brother requires assistance when entering and exiting through doorways.

Policy requires that a deficit is awarded in the area of vacating when the individual is mentally or physically unable to vacate a building in the event of an emergency. Additionally, policy reveals that the individual's ability to vacate with supervision is not considered a deficit. Testimony was consistent with the physician's assessment of the Claimant in which he was able to vacate with supervision during the event of an emergency. The ability to vacate a building with supervision is not considered a deficit; therefore, an additional deficit in the contested area cannot be awarded.

5) Bureau for Medical Services Provider Manual Chapter 514.8.2 documents:

> 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 person 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 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.

VIII. CONCLUSIONS OF LAW:

1) Policy reveals that to qualify medically for nursing facility benefits, an individual must need direct nursing care twenty-four hours a day, seven 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.

2) Policy reveals that an individual must have a minimum of five (5) deficits identified on the PAS, to qualify medically for the Medicaid nursing facility benefit.

3) The Claimant's February 20, 2012 PAS assessment revealed two qualifying deficits in the areas of bathing and administering medications. Evidence and testimony submitted during the hearing process failed to establish additional qualifying deficits; therefore, the Department was correct in its decision to deny the Claimant's medical eligibility for Long-Term Care admission.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's 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 April , 2012.

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Eric L. Phillips
State Hearing Officer