State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 20, 2016

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 16-BOR-1438

Dear Ms. [redacted]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Angela Signore, WV Bureau for Medical Services
[redacted], [redacted], WV

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **ACTION NO.: 16-BOR-1438**

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES,

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [redacted]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 19, 2016, on an appeal filed March 1, 2016.

The matter before the Hearing Officer arises from the February 8, 2016, decision by the Respondent to discontinue the Appellant's eligibility for Long-Term Care (Nursing Home) Medicaid.

At the hearing, the Respondent appeared by Kelley Johnson, WV Bureau for Medical Services. Appearing as a witness for the Department was [redacted], RN, [redacted]. The Appellant appeared *pro se*, by her representative [redacted] of [redacted]. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Long-Term Care (Nursing Home) Medicaid Policy Manual, Chapter 514, §514.6.3, Medical Eligibility
- D-2 Long-Term Care (Nursing Home) Medicaid Pre-Admission Screening (PAS) completed by a staff member of [redacted] on February 4, 2016
- D-3 Notice of Denial for Long-Term Care (Nursing Home), dated February 8, 2016
- D-4 Physician's Determination of Capacity, dated January 11, 2016
- D-5 Minimum Data Set (MDS), Resident Assessment and Care Screening, dated January 21, 2016, plus additional nursing records and progress notes from [redacted]

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

1) A staff member from the Appellant's nursing home, [redacted], WV (herein [redacted] completed a Pre-Admission Screening Form (PAS) (Exhibit D-2) with the Appellant on February 4, 2016, to assess her continuing medical eligibility for the Long-Term Care (Nursing Home) Medicaid program (herein LTC Medicaid).

2) Based on the information obtained from the PAS, a nurse from [redacted] assessed the Appellant with one deficit. The Department denied the Appellant's continuing participation in LTC Medicaid, reporting its findings to the Appellant in a Notice of Denial for Long-Term Care (Nursing Home), dated February 8, 2016 (Exhibit D-3).

3) The Appellant proposed that she should have received six additional deficits, for vacating a building in the event of an emergency, and for the functional abilities of bathing, grooming continence, walking and wheeling.

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, Chapter 514, §514.6.3: Covered Services, Limitations, and Exclusions, for Nursing Facility Services, reads as follows regarding the medical eligibility determination process for Long-Term Care (Nursing Home) Medicaid:

> 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 the 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 these areas – (g) suctioning, (h) trach-eostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

- #28: Individual is not capable of administering his/her own medications.

DISCUSSION

The Appellant received one deficit on her February 2016 PAS. She proposed that she receive six additional deficits, for vacating a building in the event of an emergency, and for the functional abilities of bathing, grooming, continence, walking and wheeling.

Vacating a building in the event of an emergency: The Appellant testified that she did not think she could get out of her building on her own in the event of an emergency. She stated that she has panic attacks and she believed she would panic if an emergency were to occur. The PAS indicates she could vacate "independently." The nursing facility's Minimum Data Set (MDS) and attached nursing notes (Exhibit D-5) indicates the Appellant can walk and transfer without assistance. There were no indications on the MDS that the Appellant was disoriented. The MDS did indicate the Appellant had anxiety, but there was no documentation to indicate the anxiety was so severe that it would prevent her from vacating her building in the event of an emergency.

Bathing: The Appellant's representative testified that the Appellant is not able to move her right arm up or down, so she is not able to wash certain areas of her body. She stated the Appellant is not able to wash her hair or her back. The Appellant testified that she recently fell, and now has problems with lifting both arms. The MDS and attached nursing notes (Exhibit D-5) document that the Appellant only needs supervision for bathing.

Grooming: The Appellant's representative testified that the Appellant's arm problem also prevents her from brushing her hair and performing other grooming functions. The Appellant testified again that she recently fell, and now has problems with both arms. The MDS and attached nursing notes (Exhibit D-5) document that the Appellant only needs assistance in setting up her grooming needs and supplies.

Continence: The Appellant testified that she had about four urinary continence accidents per week. The MDS and attached nursing notes (Exhibit D-5) contains a section labeled "Urinary Continence." This section states that the Appellant is "always continent."

Walking: The MDS and attached nursing notes (Exhibit D-5) documents that the Appellant can walk without assistance in her room and in the facility corridors.

Wheeling: The February 4, 2016, PAS (Exhibit D-2) documents that the Appellant was assessed as walking at a Level 2, using supporting or assistive devices. By policy, an applicant may receive a deficit for wheeling only if his or her walking were assessed at Level 3, one-person assistance.

CONCLUSION OF LAW

The Department assessed the Appellant with one deficit on the February 4, 2016, Long-Term Care Medicaid Pre-Admission Screening. The Appellant did not provide evidence or testimony to support her proposal that she should have received four additional deficits. Because policy requires five deficits, the Appellant does not qualify for Long-Term Care (Nursing Home) Medicaid, as defined in the WV Bureau for Medical Services' Long-Term Care (Nursing Home) Medicaid Policy Manual, §517.6.3.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to discontinue the Appellant's eligibility for Long-Term Care (Nursing Home) Medicaid.

ENTERED this 20th Day of April 2016.

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Stephen M. Baisden
State Hearing Officer