



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 8, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1130

Dear [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 Official 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,

Lori Woodward
State Hearing Official
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1130

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICIAL

INTRODUCTION

This is the decision of the State Hearing Official resulting from a fair hearing for ██████████. 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 March 3, 2016, on a timely appeal filed January 20, 2016.

The matter before the Hearing Official arises from the denial of the Respondent's application for Long Term Care (LTC) Medicaid based on medical ineligibility.

At the hearing the Respondent appeared by Kelley Johnson, Program Manager Long-Term Care Facilities, Bureau for Medical Services (BMS). The Appellant appeared by his brother, ██████████. Appearing as witnesses for the Respondent were ██████████ and ██████████, both with APS Healthcare. Appearing as witnesses for the Appellant were ██████████, social worker with ██████████, ██████████, Long-Term Care Ombudsman, ██████████, primary nurse with ██████████, and ██████████, social worker with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Medicaid Provider Manual, Chapter 514.6.3 (excerpt)
- D-2 Pre-Admission Screening (PAS) form, dated December 23, 2015
- D-3 Notice of Denial for Long-Term Care (Nursing Home), dated December 29, 2015
- D-4 ██████████ Physician Determination of Capacity
- D-5 Documentation submitted by physician, Resident Assessment and Care Screening

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 Official sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant had a Long-Term Care (LTC) Medicaid Pre-Admission Screening (PAS) assessment on December 23, 2015 to determine medical eligibility for Long-Term Care services. (Exhibit D-2)
- 2) Eligibility requires deficits be established in at least five (5) functional areas. (Exhibit D-1) The Appellant did not meet the medical eligibility criteria for the program because deficits were established in only three (3) functional areas of *medication administration*, *bathing*, and *skilled need (tracheostomy)*. Notice of denial for Long-Term Care (nursing home) was sent on December 29, 2015. (Exhibit D-3)
- 3) The Appellant has a terminal prognosis due to his throat and lung cancer. His life expectancy is less than six (6) months and he is under Hospice care.
- 4) The Appellant had a tracheostomy in September 2015 and tracheal tube placement.
- 5) Due to the Appellant's advanced cancer, he is frail, has difficulty breathing, has poor balance, has difficulty walking, and is at risk for falls. (Exhibit D-5)
- 6) The Appellant is physically unable to vacate a building in the event of an emergency without assistance.
- 7) The Appellant needs assistance with dressing due to weakness and lack of finger dexterity.

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, §514.6, *et. seg.*, details the resident eligibility requirements for LTC Medicaid services, as follows:

To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, 7 days a week. BMS 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. These deficits will be determined based on the review by BMS/designee in order to qualify for the Medicaid nursing facility 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) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
- #28: Individual is not capable of administering his/her own medications.

DISCUSSION

The Respondent conducted a PAS on December 23, 2015 to determine medical eligibility for the Appellant. The Appellant was assessed as having only three qualifying deficits in the areas of *medication administration, bathing, and skilled need*. The Appellant proposed additional deficits should have been awarded for *vacating a building in the event of an emergency* and *dressing*.

The evidence and testimony showed that the Appellant was admitted to the hospital sometime in September 2015 needing emergency tracheostomy and tube placement due to his advanced stage of throat and lung cancer. Subsequently, he was sent to the nursing home for rehabilitation. The Appellant also suffered from several other conditions apparently stemming from his cancer. His prognosis is terminal and his life expectancy is under six (6) months. He is currently under Hospice care. The Appellant's witnesses all testified that due to the Appellant having a slow gait and trouble breathing, he could not physically vacate a building in the event of an emergency without assistance. Additionally, the Appellant's witnesses testified that the Appellant is unable to button or unbutton his shirts due to loss of finger dexterity and, as such, needs assistance with dressing. In examining Exhibit D-5 progress note from December 17, 2015, it reads that "Resident [the Appellant] is high risk for falls with injury due to unassisted attempts to transfer self, frail secondary to diagnosis Lung CA, poor balance".

Based on the totality of evidence submitted, it is found that the Appellant should have been awarded deficits in the areas of *vacating a building in the event of an emergency* and *dressing*. As two additional deficits should have been awarded on the December 23, 2015 PAS, the Appellant had the necessary five (5) substantial deficits for Long-Term Care Medicaid eligibility.

CONCLUSIONS OF LAW

1. The Department awarded the Appellant three (3) deficits in the areas of of medication administration, bathing, and skilled needs.

2. The Appellant showed that he should have been awarded two (2) additional deficits in the areas of vacating a building in the event of an emergency and dressing.
3. The Appellant has five (5) deficits required by policy for medical eligibility for LTC Medicaid.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** Respondent's action to deny Appellant's application for Medicaid Long-Term Care Program benefits based on an unfavorable medical eligibility determination.

ENTERED this 8th day of March 2016.

Lori Woodward, State Hearing Official