



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

April 19, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-1433

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,

Kristi Logan  
State Hearing Officer  
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 AND HUMAN RESOURCES  
BOARD OF REVIEW**

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-1433**

**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 ██████████. 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 3, 2016.

The matter before the Hearing Officer arises from the February 29, 2016 decision by the Respondent to deny medical eligibility for Long Term Care services.

At the hearing, the Respondent appeared by Kelly Johnson, Bureau for Medical Services. Appearing as a witness for the Respondent was ██████████, RN with ██████████. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, ██████████, and ██████████ with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §514.6
- D-2 Pre-Admission Screening dated February 29, 2016
- D-3 Notice of Denial dated February 29, 2016
- D-4 Physician Determination of Capacity
- D-5 Resident Assessment and Care Screening and Progress Notes dated February 2016

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) On February 29, 2016, Appellant was evaluated to determine medical eligibility for services under the Long Term Care Program. The Pre-Admission Screening (PAS) form (D-2) identified three (3) functional deficits for the Appellant in the areas of bathing, dressing and grooming.
- 2) The Respondent issued notice (D-3) to Appellant of its decision to deny Long Term Care services as a result of the determination that she did not meet medical criteria for the program.
- 3) The Appellant contested not receiving deficits in the areas of vacating a building in an emergency, eating and medication administration.

## **APPLICABLE POLICY**

According to the West Virginia Bureau for Medical Services Medicaid Provider Manual §514.6.3, 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) (see appendix II) 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 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.

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. Department of Health and Human Resources Chapter 514: Nursing Facility Services Page 30 January 1, 2013 DISCLAIMER: This manual does not address all the complexities of Medicaid policies and procedures, and must be supplemented with all State and Federal Laws and Regulations.

- #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.

This assessment tool must be completed, signed and dated by a physician. The physician's signature indicates "to the best of my knowledge, the patient's medical and related needs are essentially as indicated". It is then forwarded to the Bureau or their designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility, regardless of the payment source for services.

### **DISCUSSION**

The Appellant testified that she has panic attacks and if there was an emergency in the facility requiring evacuation, she could experience an attack and need assistance to vacate the building. The Appellant testified that she can feed herself, but needs assistance opening containers and cutting her food. The Appellant contended that she cannot open her insulin bottles to administer her injections.

Testimony from the nursing facility staff indicated that the Appellant did not require assistance in eating upon admission and based on her progress in physical therapy, she continues to perform this task independently. There was no testimony from the nursing facility staff to support the Appellant's argument that she required physical assistance to vacate the building in an emergency or that she could not administer her own injections once the syringe was filled for her.

A review of the Appellant's Resident Assessment and Care Screening and Progress Notes indicate the Appellant preferred to set up her own meal tray and fed herself. The Appellant was noted to be ambulatory without the need of assistive devices. There was no documentation to validate the Appellant's claim that she required physical assistance in medication administration.

### **CONCLUSIONS OF LAW**

- 1) Policy requires the presences of at least five (5) functional deficits to qualify medically for Long Term Care services.

- 2) The Appellant was found to be demonstrating deficits in the areas of bathing, dressing and grooming.
- 3) Based on the information provided, no additional deficits were identified for the Appellant.
- 4) The Appellant does not meet the medical criteria to receive Long Term Care services.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Long Term Care services for the Appellant.

**ENTERED this 19<sup>th</sup> day of April 2016**

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**Kristi Logan  
State Hearing Officer**