



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

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

August 7, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1895

Dear Mr. [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],

V.

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

INTRODUCTION

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 by her representative and son [REDACTED]. Appearing as witnesses for the Appellant were [REDACTED], [REDACTED], LPN, and [REDACTED], of [REDACTED] and [REDACTED], the Appellant's daughter-in-law.

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 April 26, 2017
D-3	Notice of Denial for Long-Term Care (Nursing Home), dated April 26, 2016
D-4	Physician's Determination of Capacity, dated April 20, 2017
D-5	Appellant's Progress Notes from [REDACTED]

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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] (herein [REDACTED]), completed a Pre-Admission Screening Form (PAS) (Exhibit D-2) with the Appellant on April 26, 2017, pursuant to her application for the Long-Term Care (Nursing Home) Medicaid program (herein LTC Medicaid).
- 2) Based on the information obtained from the PAS, a nurse from APS Healthcare assessed the Appellant with two deficits, for bathing and dressing. The Department denied the Appellant's application for LTC Medicaid, reporting its findings to her in a Notice of Denial for Long-Term Care (Nursing Home), dated April 26, 2017 (Exhibit D-3).
- 3) The Appellant's representative proposed that the Appellant should have received six additional deficits, for vacating a building in the event of an emergency, for the functional abilities of grooming, orientation, walking and transferring, and for administering medications.

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) 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 Appellant received two deficits on her April 2017 PAS. Her representative proposed that she receive six additional deficits, for vacating a building in the event of an emergency, for the functional abilities of grooming, orientation, walking and transferring, and for administering medications.

One of the Appellant's witnesses, a Licensed Practical Nurse (LPN) from [REDACTED] testified that the Appellant is ambulatory and transfers without one-person assistance. The nurse testified that the Appellant may need occasional supervision with walking and transferring, but she usually does so independently. The nurse testified that the Appellant knows her name, knows where she is, and can tell staff the year, date and time. However, she added, the Appellant does exhibit intermittent disorientation. The Department's representative testified that in order to assess the Appellant with a deficit for orientation, the April 2017 PAS would have to show she is totally disoriented, with no point of clarity at all, or that she is comatose.

The Appellant's witness, the facility nurse, testified that the Appellant's intermittent disorientation does affect her ability to vacate the nursing home in the event of an emergency. She testified that if the Appellant were sleeping at night or taking a nap during the day, she would be mentally disoriented if she were awakened by staff informing her she had to vacate the building. She added that in such an eventuality, she would not have the mental ability to vacate the facility.

The Appellant's representative, her son, testified that the Appellant can take care of some of her grooming needs, but cannot bend over far enough to take care of her lower legs. The Appellant's witness, the facility nurse, testified that because the Appellant is diabetic, her diabetic nail care is done by the facility's nursing staff.

The Appellant's representative testified that the Appellant is a diabetic and must take insulin injections. He stated that the Appellant cannot administer these injections. The Appellant's witness, the facility nurse, testified that the Appellant does not administer her insulin or any of her other medications.

The Appellant's representative and witnesses did not provide testimony to support their position that the Appellant should have received deficits for orientation, walking or transferring. The Appellant's witness, the facility nurse, testified that the Appellant could walk and transfer with occasional supervision, and experienced intermittent disorientation.

However, testimony and evidence support the Appellant's position that additional deficits should have been assessed for vacating the facility in the event of an emergency, grooming and administering medications. The facility nurse stated that if the Appellant were sleeping at the onset of an emergency requiring evacuation, she would awaken in a state of confusion and disorientation. She added that under those conditions, she would be mentally unable to vacate the building. The facility nurse testified that the Appellant is a diabetic, and as such nursing staff must cut her fingernails and toenails, an aspect of the functional ability of grooming. The nurse also testified that facility staff members administer all of her medications, including her insulin injections.

CONCLUSION OF LAW

The Department assessed the Appellant with two deficits on the April 26, 2017, Long-Term Care Medicaid Pre-Admission Screening (PAS). The evidence and testimony support the position of the Appellant's representative that the Department should have assessed her with three additional deficits, for vacating a building in the event of an emergency, grooming and administering medications. With the addition of these deficits, the Appellant has met the five-deficit requirement in order to 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 REVERSE the Department's proposal to deny the Appellant's application for Long-Term Care (Nursing Home) Medicaid.

ENTERED this 7th Day of August 2017.

Stephen M. Baisden
State Hearing Officer