STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jim Justice
Governor

BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Bill J. Crouch
Cabinet Secretary

May 23, 2017

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 17-BOR-1252

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 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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Angela Signore, Department Representative

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 17-BOR-1252**

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 March 21, 2017, on an appeal filed February 10, 2017.

The matter before the Hearing Officer arises from the December 14, 2016 decision by the Respondent to deny the Appellant's application for Long Term Care/Nursing Facility Medicaid based on medical eligibility findings.

At the hearing, the Respondent appeared by Kelley Johnson. Appearing as a witness for the Department was Kelly McFarland. The Appellant appeared by her daughter [redacted]. Appearing as witnesses for the Appellant were [redacted], [redacted] and [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 514: Covered Services, Limitations, and Exclusions for Nursing Facility Services, §514.6.3
- D-2 Pre-Admission Screening (PAS) form, dated December 7, 2016
- D-3 Notice of decision, dated December 14, 2016
- D-4 Physician Determination of Capacity (form), dated November 10, 2016
- D-5 Documentation from the Appellant's nursing facility; Minimum Data Set (MDS) documents, dated December 2, 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) The Appellant applied for Long Term Care (LTC) Medicaid for nursing facility services.

2) The Appellant was assessed to determine LTC medical eligibility on December 17, 2016, and the findings from this assessment were documented on a Pre-Admission Screening (PAS) form. (Exhibit D-2)

3) The Respondent notified the Appellant on December 14, 2016 that she was determined "ineligible for long-term care (nursing facility) admission based upon WV Medicaid criteria," which requires "at least five (5) areas of care needs (deficits) that meet the severity criteria." (Exhibit D-3)

4) The Appellant established three areas of care needs meeting this severity criteria: medication administration, grooming and bathing.

5) The PAS regarding the Appellant noted she was "independent" or "Level 1" in the areas of eating, dressing, walking and transferring and occasionally incontinent or "Level 2" in the area of bladder continence. (Exhibit D-2)

6) Additional medical information regarding the Appellant was documented on a Minimum Data Set (MDS) form, which noted she was "independent" in the areas of eating, walking and transferring. (Exhibit D-5)

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, Chapter 514: Covered Services, Limitations, and Exclusions, for Nursing Facility Services, §514.6.3, details the medical eligibility determination process for LTC Medicaid, or Nursing Facility Services, as follows:

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. 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 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 has appealed the Respondent's decision to deny her application for LTC Medicaid, or Nursing Facility Services, based on insufficient deficits to establish medical eligibility. The Respondent must prove by a preponderance of the evidence that the Appellant did not establish medical eligibility for the program.

LTC Medicaid policy requires five deficits to establish medical eligibility. The PAS noted only three deficits for the Appellant. Testimony and evidence failed to establish any additional deficits. Additional documentation corroborated the PAS findings that the Appellant could eat, walk and transfer independently. Testimony regarding the Appellant described her as uncooperative in proposed areas of care rather than unable to perform those tasks. The PAS findings regarding the Appellant were correct and the Respondent was correct to deny the Appellant's application for LTC Medicaid based on unmet medical eligibility.

CONCLUSION OF LAW

Because the Appellant did not meet the severity criteria in at least five (5) of the areas of care set by policy, the Respondent must deny the Appellant's application for LTC Medicaid for Nursing Facility services based on unmet medical eligibility.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's application for LTC Medicaid for Nursing Facility services.

ENTERED this ____Day of May 2017.

_____

Todd Thornton
State Hearing Officer