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

Jim Justice
Governor

BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326

Bill J. Crouch
Cabinet Secretary

August 2, 2017

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 17-BOR-1896

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision
Form IG-BR-29
cc: Angela Signore

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. ACTION NO.: 17-BOR-1896

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 July 19, 2017, on an appeal filed May 15, 2017.

The matter before the Hearing Officer arises from the May 3, 2017 decision by the Department to deny medical eligibility for the Respondent's application for Long Term Care (LTC) Medicaid.

At the hearing, the Respondent appeared by Kelley Johnson, Program Manager Long-Term Care Facilities, Bureau for Medical Services (BMS). Appearing as a witness for the Respondent was [redacted] (Nurse [redacted]), Review Nurse, KEPRO. Representing the Appellant was her son, [redacted], Licensed Certified Social Worker. Appearing as witnesses for the Appellant were [redacted], granddaughter, [redacted], daughter, [redacted], daughter, and [redacted], Director of Social Services at [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

D-1 West Virginia Medicaid Provider Manual, Chapter 514.6
D-2 (*)
D-3 Notice of Denial Determination from APS Healthcare, dated May 3, 2017.
D-4 (*)

Appellant's Exhibits:

A-1 Pre-Admission Screening (PAS) excerpt, items 30-39
A-2 Neurologist visit documentation, dated May 23, 2017
A-3 Orthopedic Patient Plan, dated June 13, 2017
A-4 Neurologist Fall Assessment, dated May 23, 2017

Joint Exhibits:

J-1 PAS, dated May 3, 2017
J-2 [redacted] documentation

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 following Findings of Fact are set forth.

* Department Exhibit D-2 was reassigned as Joint Exhibit J-1; Department Exhibit D-4 was reassigned as Joint Exhibit J-2

FINDINGS OF FACT

1) On May 3, 2017, a Long-Term Care (LTC) Medicaid Program PAS was completed to determine the Appellant's eligibility for Long-Term Care services. (Exhibit J-1)

2) Nurse [redacted] evaluated the Appellant and found three (3) functional deficits in the areas of *Medication Administration, Bathing,* and *Requires Emergency Assistance*. (Exhibit D-3)

3) On May 3, 2017, a Notice of Denial was sent to the Appellant advising that she only met three (3) of the five (5) functional deficits required for eligibility. (Exhibit D-3)

4) At the time of PAS assessment, the Appellant had a history of left knee replacement, hip replacement, and Osteoporosis. (Exhibit J-2)

5) Documentation, dated June 13, 2017, reflects that the Appellant had frequent falls because of having both hips replaced. The Appellant's orthopedic practitioner recommended the use of a walker during ambulation. (Exhibit A-3)

6) The Appellant had Osteoarthritis of the knee present at the time of PAS, although not documented within the PAS. (Exhibits J-1 and J-2)

7) On April 20, 2017, documentation shows the Appellant had history of advanced Arthritis, ADL self-care performance deficit, impaired balance, and age-related physical debility. (Exhibit J-2)

8) On April 20, 2017, a Plan of Care note reflects that the Appellant's physician, Dr. [redacted] had witnessed the Appellant fall December 14, 2016. (Exhibit J-2)

9) On April 5, 2017, Dr. [redacted] Podiatrist, trimmed the Appellant's toenails. (Exhibit J-2)

10) The Respondent testified that the Appellant meets eligibility criteria for *Grooming*.

11) On the PAS, the Appellant required staff assistance moving from seated to standing, moving on and off toilet. (Exhibit J-2)

12) On the PAS, the Appellant was not steady during walking, turning, and surface to surface transfer. (Exhibit J-2)

13) Per witness testimony, at the time of the PAS the Appellant was unstable, stumbled, and required help getting out of a chair to use a walker or wheelchair due to history of hip and knee replacements.

14) The Respondent testified that the Appellant meets eligibility criteria for *Walking*.

15) The witness for [redacted] provided testimony that staff were unclear of what information to consider when assisting with assessment of the Appellant's functioning deficits.

16) The Respondent testified that she had advised the nursing facility weeks prior to the hearing to submit a new PAS based on the Appellant's ability to meet additional functioning deficits; however, no PAS was submitted by the nursing facility.

APPLICABLE POLICY

BMS Provider Manual §514.6.3 provides that:

A PAS is utilized for physician certification of the medical needs of individuals applying for LTC Medicaid benefits…

An individual must have a minimum of five (5) deficits identified on the PAS in order to qualify for the Medicaid nursing facility benefit…

#26: Functional abilities of individual in the home

- Grooming: Level 2 or higher (physical assistance or more)
- Waling: Level 3 or higher (one person assist in the home)

DISCUSSION

Pursuant to policy, applicants for the LTC Medicaid benefit must be approved as medically eligible to receive direct nursing care twenty-four (24) hours a day, seven (7) days per week. KEPRO is the Utilization Management Contractor (UMC) responsible for conducting medical necessity assessments to confirm a person's medical eligibility for LTC benefits. Per policy, the Appellant must have five (5) functioning deficits on the PAS to qualify medically for nursing facility services. On May 3, 2017, Nurse [redacted] RN with KEPRO evaluated the Appellant and found three (3) functional deficits in the areas of *Medication Administration, Bathing,* and *Requires Emergency Assistance*. On May 3, 2017, a Notice of Denial for Long-Term Care was sent to the Appellant stating that she did not meet the eligibility criteria threshold of five (5) functional deficits required to qualify for nursing facility services. The Appellant representative contends that the Appellant should have been awarded deficits in the areas of *Grooming* and *Walking.*

The Respondent had to show by a preponderance of evidence that the UMC followed policy in determining the Appellant's medical eligibility for the LTC benefit. The evidence presented demonstrated that the Appellant did require a one-person assist with grooming and walking in the home at the time of the assessment. The Respondent conceded that the Appellant should have been awarded additional deficits for *Grooming* and *Walking*.

After a review of the evidence presented, the Respondent failed to prove by a preponderance of evidence that the UMC correctly evaluated the Appellant's deficits and failed to show that the Appellant's medical eligibility for the LTC benefit was correctly determined. The Appellant representative demonstrated and the Respondent conceded that the Appellant should be awarded two (2) additional functioning deficits. As two (2) additional deficits should have been awarded on the May 3, 2017 PAS, the Appellant had the necessary five (5) functioning deficits required for Long-Term Care Medicaid eligibility. The Respondent was incorrect in its decision to deny the Appellant's medical eligibility for the LTC benefit.

CONCLUSIONS OF LAW

1) Policy requires that an applicant show five (5) functional deficits on the Pre-Admission Screening (PAS) to qualify medically for LTC Medicaid.

2) The Respondent awarded the Appellant three (3) functioning deficits in the areas of *Medication Administration, Bathing,* and *Requires Emergency Assistance*.

3) The Appellant representative demonstrated and the Respondent conceded that the Appellant should have been awarded two (2) additional deficits in the areas of *Walking* and *Grooming.*

4) The Respondent was incorrect in its decision to deny the Appellant medical eligibility for LTC Medicaid.

5) The Appellant has five (5) functioning deficits required by policy for medical eligibility of LTC Medicaid.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision to deny the Appellant's application for the Medicaid Long-Term Care Program.

ENTERED this 2nd day of August 2017.

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Tara B. Thompson
State Hearing Officer