



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

M. Katherine Lawson
Inspector General

August 30, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2003

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Angela Signore, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2003

**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 August 22, 2018, on an appeal filed July 11, 2018.

The matter before the Hearing Officer arises from the May 8, 2018 decision by the Respondent to deny the Appellant's benefits under the Long-Term Care Medicaid Program.

At the hearing, the Respondent appeared by Kelley Johnson, Program Manager for Long-Term Care Facilities, Bureau for Medical Services, WVDHHR. Appearing as a witness for the Respondent was ██████████, RN, KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Appellant's sister; ██████████, Appellant's sister; ██████████, Appellant's daughter; and ██████████, Social Worker, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- | | |
|-----|--|
| D-1 | West Virginia Medicaid Manual Chapter 514.6 |
| D-2 | Pre-Admission Screening completed on May 6, 2018 |
| D-3 | Notice of Decision dated May 8, 2018 |
| D-4 | Minimum Data Set dated May 4, 2018 |

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 May 8, 2018, the Appellant was notified (D-3) that her application for Long-Term Care Medicaid benefits was denied.
- 2) The application was denied because a Pre-Admission Screening form completed on May 6, 2018 (D-2) revealed that the Appellant had only two (2) qualifying functional deficits for the Long-Term Care Program.
- 3) The Appellant received deficits in the functional areas of dressing and continence.
- 4) Exhibit D-1 states that an individual must demonstrate five (5) qualifying functional deficits to be eligible for Long-Term Care benefits.

APPLICABLE POLICY

West Virginia Medicaid Manual Chapter 514.6.3 (D-1) states that 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 Decubitis- 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 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 The individual has skilled nursing care needs in one or more of these areas: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings or irrigations.

#28 Individual is not capable of administering his/her own medications.

The assessment tool designated by the Bureau for Medical Services must be completed and signed and dated by a physician. It is then forwarded to the Bureau or its designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility no matter what the payment source for services.

DISCUSSION

Policy states that an individual must have five (5) qualifying functional deficits to be determined eligible for the Long-Term Care Medicaid Program.

The Appellant received two (2) deficits on her May 2018 PAS. The Appellant and her witnesses contended that she should have received additional deficits in the following areas:

Inability to vacate the building in the event of an emergency- The Appellant has extreme anxiety in some situations, is unable to traverse stairs, and fears falling. The Respondent's representative stated that there are no steps in the Appellant's Long-Term Care facility, and the Appellant indicated that she believes she could follow a crowd with assistance in the event of an emergency. Based on information provided during the hearing, the Appellant could vacate the nursing facility with supervision. Therefore, no deficit can be awarded for vacating.

Physical assistance with bathing- The Appellant's witnesses contended that the Appellant, who is unable to use her left arm, cannot bathe independently. The Appellant testified that aides at the Long-Term Care facility physically wash and dry her while showering. A Minimum Data Set for the Appellant dated May 4, 2018 (D-4) confirms that the Appellant requires one-person physical assistance with bathing. Therefore, one (1) additional deficit is awarded in the functional area of bathing.

Physical assistance with grooming- The Appellant testified that staff members shave her legs and clean her dentures. D-4 verifies that the Appellant requires one-person physical assistance with grooming activities at the facility. Therefore, one (1) additional deficit is awarded in the functional area of grooming.

Physical assistance with eating- The Appellant's witnesses indicated that she can use a fork, but

cannot cut food or butter bread with a knife because she only has use of one hand. The Appellant stated that she can eat from her plate, but cannot prepare her own meals. As the Appellant reported that she can eat from her plate independently, no additional deficit can be awarded in the functional area of eating.

Medication administration- The Appellant cannot place her pills in a container or correlate times to take them. She has no injectable medications. As the Appellant is physically capable of taking her pills with prompts, no additional deficit can be awarded for medication administration.

CONCLUSION OF LAW

Based on information provided during the hearing, two (2) additional functional deficits are awarded to the Appellant, bringing the Appellant's total functional deficits to four (4). As the Appellant continues to lack five (5) qualifying functional deficits, the Respondent acted correctly in denying her Long-Term Care Medicaid application.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to deny the Appellant's Long-Term Care Medicaid benefits.

ENTERED this 30th Day of August 2018.

Pamela L. Hinzman
State Hearing Officer