



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

Bill J. Crouch
Cabinet Secretary

M. Katherine Lawson
Inspector General

August 13, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-1813

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]

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

██████████,

Appellant,

v.

ACTION NO.: 18-BOR-1813

**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 July 24, 2018, on an appeal filed May 31, 2018.

The matter before the Hearing Officer arises from the May 21, 2018, decision by the Respondent to deny the Appellant's application for Long-Term Care (Nursing Home) Medicaid.

At the hearing, the Respondent appeared by Kelley Johnson, WV Bureau for Medical Services. Appearing as a witness for the Department was ██████████, RN, KEPRO. The Appellant appeared *pro se*. Acting as the Appellant's representative was ██████████, Social Worker at ██████████ (hereinafter ██████████).

Department's Exhibits:

- D-1 Long-Term Care (Nursing Home) Medicaid Policy Manual, Chapter 514, §514.6, Eligibility Requirements
- D-2 Long-Term Care (Nursing Home) Medicaid Pre-Admission Screening (PAS) completed by a staff member of ██████████ on May 17, 2018
- D-3 Notice of Denial for Long-Term Care (Nursing Home), dated May 21, 2018
- D-4 Physician's Determination of Capacity, signed by Appellant's physician ██████████, MD, on April 2, 2018
- D-5 Minimum Data Set (MDS) from ██████████ regarding Appellant, dated April 6, 2018

Appellant's Exhibits:

None

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] completed a Pre-Admission Screening Form (PAS) (Exhibit D-2) with the Appellant on May 17, 2018, pursuant to his 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 KEPRO assessed the Appellant with three deficits, for the functional abilities of bathing, grooming and dressing.
- 3) The Department denied the Appellant's application for LTC Medicaid, reporting its findings to him in a Notice of Denial for Long-Term Care (Nursing Facility), dated May 21, 2018 (Exhibit D-3).
- 4) The Appellant requested a fair hearing based on the Department's denial of his LTC Medicaid application.

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-person assistance in the home)
Walking: Level 3 or higher (one-person assistance 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.)

- #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 three deficits on his May 2018 PAS, for bathing, grooming and dressing. Neither he nor his representative, the social worker at the nursing home where he lived, proposed any areas of the PAS wherein they believed he should have received additional deficits.

The Appellant's representative testified that he was a very big help at the nursing home, and staff at the nursing home hoped they could keep him there. She added that he had come to the nursing home from the [REDACTED] WV, [REDACTED], so she hoped they could discharge him to a more nurturing and supportive environment should the facility be required to discharge him.

Based on the May 2018 PAS and attendant documentation, the Department assessed the Appellant with deficits for bathing, grooming and dressing, as stated above. Neither the Appellant nor his representative provided testimony or evidence to support the addition of more deficits. The Department acted correctly to deny the Appellant's application for LTC Medicaid.

CONCLUSIONS OF LAW

- 1) The Department assessed the Appellant with three deficits, for bathing, grooming and dressing, on the May 17, 2018, Long-Term Care Medicaid Pre-Admission Screening (PAS).
- 2) The Appellant and his representative did not present evidence or testimony to support the presence of additional deficits.
- 3) In order for the Appellant to qualify for Long-Term Care (Nursing Home) Medicaid, his application needed to demonstrate the presence of five deficits.

- 4) The Department acted correctly to deny the Appellant's application for Long-Term Care (Nursing Home) Medicaid, as found in the WV Bureau for Medical Services' Long-Term Care (Nursing Home) Medicaid Policy Manual, §514.6.3.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to deny the Appellant's application for Long-Term Care (Nursing Home) Medicaid.

ENTERED this 13th Day of August 2018.

Stephen M. Baisden
State Hearing Officer