



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-0955 Fax: (304) 558-1992**

**Jolynn Marra
Interim Inspector General**

June 5, 2019



RE: [REDACTED] v. WV DHHR
ACTION NO.: 19-BOR-1428

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services
KEPRO

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

████████████████████,

Appellant,

v.

Action Number: 19-BOR-1428

**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 April 11, 2019, on an appeal filed March 11, 2019.

The matter before the Hearing Officer arises from the February 25, 2019 decision by the Respondent to deny medical eligibility for Long Term Care Medicaid.

At the hearing, the Respondent appeared by Alanna Cushing. Appearing as a witness for the Department was Mary Casto. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|--|
| D-1 | BMS Provider Manual (excerpt)
Chapter 514 Nursing Facility Services
§§ 514.6 – 514.6.3 |
| D-2 | Pre-Admission Screening (PAS)
Assessment Date: February 22, 2019 |
| D-3 | Physician Determination of Capacity
Examination Date: March 27, 2019 |
| D-4 | Documentation submitted by Physician |

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) The Appellant applied for Long Term Care (LTC) Medicaid for nursing facility services.
- 2) An assessment of the Appellant's medical need for nursing facility services was conducted on February 22, 2019, and a summary of the assessment findings were compiled in a Pre-Admission Screening (PAS) form. (Exhibit D-2)
- 3) The Respondent reviewed this form (Exhibit D-2) to determine the Appellant's medical eligibility for LTC Medicaid.
- 4) By notice dated February 25, 2019, the Respondent advised the Appellant that he was determined medically ineligible for LTC Medicaid. (Exhibit D-5)
- 5) The notice provided the reason for denial as insufficient "area of care needs (deficits) that meet the severity criteria." (Exhibit D-5)
- 6) The notice indicated the Appellant had deficits in four areas – *grooming, bathing, dressing*, and the *skilled needs* category for sterile dressings – and the medical eligibility requirement for LTC Medicaid is five deficits. (Exhibit D-5)
- 7) The Appellant proposed that additional deficits should have been awarded in the areas of *medication administration, walking, transferring, and wheeling*.
- 8) The Appellant was capable of administering his own medications with prompting and supervision.
- 9) The Appellant did not require one-person assistance in the area of *walking*.
- 10) The Appellant did not require one-person or two-person assistance in the area of *transferring*.

- 11) The Appellant did not have the required functional deficit in the area of *walking* for consideration of a deficit in the area of *wheeling*.

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 medical eligibility for LTC Medicaid. The Respondent must show by preponderance of the evidence that the medical eligibility of the Appellant was correctly assessed in the areas used to make this determination, specifically that the Appellant did not have at least five deficits as defined by policy criteria.

The Appellant was awarded four deficits resulting from his February 22, 2019 assessment and proposed that he should have been awarded four additional deficits in the hearing: *medication*

administration, walking, transferring, and wheeling. The Appellant was assessed (Exhibit D-2) as capable of administering his own medications with prompting and supervision. The Appellant testified that he is able to take his medication but is forgetful about doing so. The Appellant testified that he is able to stand and walk on his own, but that he has poor balance and cannot walk for a long time. The Appellant's testimony supported either a finding that he was independent in the areas of *transferring* and *walking* or that he required supervision or an assistive device in these areas, but not the policy threshold of one-person assistance required for a deficit. Regarding the area of *wheeling*, the Appellant testified that he has difficulty using his hands to operate his wheelchair. Policy requires a deficit in the area of *walking* for consideration of a *wheeling* deficit, and the Appellant could not be awarded a deficit in *wheeling* for this reason.

With no additional deficits revealed through evidence or testimony, the Respondent was correct to deny the Appellant's application for LTC Medicaid based on medical ineligibility due to insufficient deficits.

CONCLUSION OF LAW

Because the Appellant was correctly assessed with four deficits as defined by LTC Medicaid policy, the Respondent correctly denied the Appellant's LTC Medicaid application due to medical ineligibility.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's application for Long Term Care Medicaid.

ENTERED this ____ Day of June 2019.

Todd Thornton
State Hearing Officer