



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

June 27, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:19-BOR-1805

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 19-BOR-1805

**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 June 27, 2019, on an appeal filed May 30, 2019.

The matter before the Hearing Officer arises from the May 14, 2019, decision by the Respondent to deny medical eligibility for Long Term Care (nursing facility) services for the Appellant.

At the hearing, the Respondent appeared by Alanna Cushing, Bureau for Medical Services. Appearing as a witness for the Respondent was Mary Casto, RN with KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Social Worker and ██████████, Business Manager with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Policy Manual §514.6
- D-2 Pre-Admission Screening dated May 13, 2019
- D-3 Physician's Determination of Capacity dated March 6, 2019
- D-4 Medication Log and Activities of Daily Living Record for May 2019, Resident Assessment and Care Screening, and Progress Notes for February 2019 through June 2019
- D-5 Notice of Denial dated May 14, 2019

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 13, 2019, the Appellant was evaluated to determine medical eligibility for Long Term Care (nursing facility) services.
- 2) The Pre-Admission Screening (PAS) form completed on May 13, 2019, for the Appellant identified one (1) functional deficit for the Appellant in the area of bathing (Exhibit D-2).
- 3) The Respondent issued notice to the Appellant of its decision to deny Long Term Care services as a result of the determination that he did not meet medical criteria for the program (D-5).

APPLICABLE POLICY

According to the West Virginia Bureau for Medical Services Medicaid Provider Manual §514.6.3, to qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, 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 deficits identified on the PAS. These deficits will be determined based on the review by BMS/designee 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

Pursuant to policy, an individual must need direct nursing care 24 hours a day, 7 days a week to be eligible for Long Term Care services. Medical eligibility is determined by a tool known as the PAS utilized for physician certification of the medical needs of individuals applying for Long Term Care services. An individual must have a minimum of five deficits identified on the PAS.

The May 2019 PAS completed for the Appellant revealed that he had only one functional deficit. The Appellant and his witnesses did not dispute the results of the May 2019 PAS, or offer testimony indicating that the Appellant had additional functional deficits. The Appellant contended that he needed additional time in the nursing facility where he currently resided to secure appropriate housing.

Whereas the Appellant did not meet the medical criteria as set forth in policy, the Respondent correctly denied Long Term Care services for the Appellant.

CONCLUSIONS OF LAW

- 1) Policy requires the presences of at least five (5) functional deficits to qualify medically for Long Term Care services.
- 2) The Appellant was found to be demonstrating a deficit in bathing.
- 3) Based on the testimony and information provided, no additional deficits were identified for the Appellant.
- 4) The Appellant does not meet the medical criteria to receive Long Term Care services.

DECISION

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

ENTERED this 27th day of June 2019.

**Kristi Logan
State Hearing Officer**