



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
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**Jolynn Marra**  
Interim Inspector  
General

October 16, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-2187

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: Appellant's Recourse  
Form IG-BR-29

cc: Alanna Cushing, Bureau for Medical Services  
Lori Tyson, Bureau for Medical Services  
[REDACTED], Appellant's Friend  
[REDACTED], Ombudsman

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

██████████,

**Appellant,**

v.

**ACTION NO.: 19-BOR-2187**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on September 18, 2019 on an appeal filed August 12, 2019.

The matter before the Hearing Officer arises from the July 25, 2019 determination by the Respondent to deny the Appellant medical eligibility for Medicaid Long-Term Care (LTC) Admission.

At the hearing, the Respondent appeared by Alanna Cushing, Bureau for Medical Services (BMS), Program Manager for Long-Term Care Facilities. Appearing on behalf of the Respondent was Mary Casto (Nurse Casto), RN, KEPRO; ██████████ (Mr. ██████████), ██████████ (Facility) Administrator; ██████████ (Ms. ██████████), Facility Director of Nursing; and ██████████ (Ms. ██████████), Facility Director of Rehabilitation. The Appellant appeared and was represented by ██████████ Ombudsman. Appearing as witness on behalf of the Appellant was ██████████, friend of the Appellant. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 BMS Notice, dated August 16, 2019
- D-2 Facility Records, dated April 27, 2019 through July 24, 2019; Pre-Admission Screening (PAS), dated July 25, 2019
- D-3 Physician's Determination of Capacity, signed April 30, 2019
- D-4 BMS Manual § 514.6.3
- D-5 KEPRO Notice of Denial for LTC, dated July 25, 2019

**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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) The Appellant was admitted to the Facility on April 27, 2019 (Exhibit D-2).
- 2) On July 25, 2019, a PAS was completed by the Facility to facilitate the Appellant's request to transfer to [REDACTED] (Exhibit D-2).
- 3) On July 25, 2019, the Respondent issued a notice advising the Appellant that his request for Medicaid LTC admission had been denied due to the Appellant's PAS results failing to demonstrate deficits in five functioning areas as required by policy (Exhibit D-2).
- 4) The PAS was completed by [REDACTED], MD (Exhibit D-2).
- 5) The physician's recommendations read, "FOR NURSING FACILITY PLACEMENT ONLY On the basis of present medical findings, the individual may eventually be able to return home or be discharged – No" (Exhibit D-2).
- 6) The physician's recommendations read, "I recommend that the services and care to meet these needs can be provided at the level of care indicated -A. Nursing Home" (Exhibit D-2).
- 7) The Appellant was awarded deficits in *bathing, dressing, and requires emergency assistance*.
- 8) On May 3, 2019, the Appellant required physical assistance with bed mobility, dressing, personal hygiene, transfer, walking, and bathing (Exhibit D-2).
- 9) At the time of the PAS, the Appellant did not have a decubitus (Exhibit D-2).
- 10) At the time of the PAS, the Appellant was oriented (Exhibit D-2).
- 11) At the time of the PAS, the Appellant was continent (Exhibit D-2).
- 12) On the PAS, the Appellant was awarded Level 1- self/prompting in the areas of *eating, and grooming* (Exhibit D-2).
- 13) In June and July 2019, the Appellant required set-up help from staff to perform eating on each shift (Exhibit D-2).

- 14) On July 2, 2019, the Appellant required physical assistance to complete personal hygiene (Exhibit D-2).
- 15) At the time of the PAS, the Appellant required physical assistance with toenail cutting (Exhibit D-2).
- 16) On the PAS, the Appellant was awarded Level 2-supervised/assistive device in the areas of *transferring*, and *walking* (Exhibit D-2).
- 17) In June and July 2019, the Appellant performed all bed mobility, transferring and walking in-room independently with no physical assistance from staff (Exhibit D-2).
- 18) On the PAS, the Appellant was awarded Level 3-situational assistance in the area of *wheeling* (Exhibit D-2).
- 19) At the time of the PAS, the Appellant required continuous oxygen (Exhibit D-2).
- 20) At the time of the PAS, the Appellant was capable of administering his own medications with prompting/supervision (Exhibit D-2).

### **APPLICABLE POLICY**

#### **Bureau for Medical Services (BMS) Manual § 514.6.1 Application Procedure provides in part:**

The medical eligibility determination is based on a physician's assessment of the medical and physical needs of the individual. The PAS assessment must have a physician signature dated not more than 60 days prior to admission to the nursing facility.

#### **BMS Manual § 514.6.2 Pre-Admission Screening provides in part:**

The Pre-Admission Screening is used to determine the individual's medical need for nursing facility services based on evaluation of identified deficits and screens for the possible presence of a major mental illness, mental retardation, and/or developmental disability.

#### **BMS Manual § 514.6.3 provides in part:**

The 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

#26: Functional abilities of the individual in the home –

- Eating: Level 2 or higher (physical assistance to get nourishment, not preparation)
- Grooming: Level 2 or higher (physical assistance or more)
- Orientation: Level 3 or higher (totally disoriented, comatose)
- Transfer: Level 3 or higher (one person or two person 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)

#27: Individual has skilled needs in one or more of these areas: g. suctioning, h. tracheostomy, i. ventilator, k. parenteral fluids, l. sterile dressings, m. irrigations.

#28: Individual is not capable of administering his own medications

## **DISCUSSION**

Pursuant to policy, applicants for the Medicaid LTC benefit must be approved as medically eligible to receive direct nursing care twenty-four (24) hours per day, seven (7) days per week. KEPRO is the Utilization Management Contractor (UMC) responsible for conducting medical necessity reviews of the PAS to confirm a person's medical eligibility for the LTC benefit. The Appellant was awarded deficits in the areas of *bathing, dressing, and requires emergency assistance*. Decubitus was not contested. The Appellant argued that the Appellant should have been awarded deficits in the areas of *transfer, walking, wheeling, medication administration, and grooming*.

The Respondent had to demonstrate by a preponderance of evidence that the UMC followed policy in determining the Appellant's medical eligibility for LTC. The PAS was completed by the Facility physician. The evidence presented did not clearly reflect what functional abilities the Appellant had at the time of the PAS or rule out that the Appellant should be awarded additional deficits in the functional areas of *transfer, walking, wheeling, and grooming*.

Arguments were presented reflecting the Appellant's functioning prior to Facility admission and functioning decline since the time of the PAS. This Hearing Official must determine whether the Respondent correctly denied the Appellant's July 25, 2019 PAS due to the Appellant's functioning at the time of the PAS, therefore, functioning prior to Facility admission and decline in the Appellant's functioning since the July 25, 2019 PAS were not considered.

### **Medication Administration**

The Appellant's witness testified that historically the Appellant has been unable to identify and take his medications independently. The Appellant argued that the Respondent's evidence failed to demonstrate that the Appellant was able to read medication labels, report what medications were, and report when medications should be taken. They May 3, 2019 Resident Care and Assessment Screening reflected a blank in the Functional Abilities section beside "Functional Cognition" which would have assessed the Appellant's need for assistance with planning regular task such as remembering to take medication.

The Respondent testified that the PAS had to reflect that the Appellant was incapable of administering medications himself and that due to the Facility marking that the Appellant was able to take medications with prompting/supervision, that a deficit was not awarded. The Appellant argued that the Facility's practice of handing the Appellant medication and watching him swallow the medication is not sufficient to determine whether he is capable of administering his own medications. The Board of Review cannot pass judgement on policy and can only determine if the Respondent followed the policy when denying the Appellant's LTC eligibility. Nursing Facility Services policy does not stipulate how physicians should determine an individual's ability to take medications; therefore, this Hearing Officer acknowledges that the Facility has the discretion to determine how an individual's abilities are assessed.

Ms. [REDACTED] testified that at the time of the PAS, the Appellant was physically able to take his medications but was unable to identify his medications independently. Ms. [REDACTED] testified that the PAS inquired about whether or not the Appellant is able to administer his medications, not whether he is able to identify his medications. The BMS Policy Manual does not provide a definition for the term "administer;" however, testimony by the Respondent's witness clarified that the Facility assessed the Appellant's skill to administer medications through his ability to take medications when prompted by staff to do so. As the Facility has the discretion to determine its own method of medication administration assessment and the physician's PAS assessment indicated that the Appellant only required prompting/supervision, the evidence failed to demonstrate that the Appellant should have been awarded an additional deficit in the area of *medication administration*.

#### Eating

The Appellant's witness testified that the Appellant can feed himself but is messy. The evidence did not establish that the Appellant required physical assistance to get nourishment as the Facility's documentation only reflected that the Appellant required set-up when eating.

#### Grooming

The Appellant argued that due to COPD related shortness of breath, the Appellant required assistance completing Activities of Daily Living (ADL). The Appellant's representative testified that the Appellant was unable to touch his feet and required assistance with toenail cutting. The Appellant's representative argued that there was not sufficient assessment conducted to determine what assistance the Appellant required when grooming. The Appellant's witness testified that prior to Facility admission that the Appellant required a podiatrist to cut his toenails. The May 3, 2019 Resident Care Assessment Screening assistance conducting personal hygiene activities. Ms. [REDACTED] testified that Facility protocol is for a podiatrist to cut all of the residents' toenails. The Facility's ADL logs reflected that on July 2, 2019, the Appellant required physical assistance to complete personal hygiene. Neither the Appellant or the Respondent contested the accuracy of the Facility's ADL logs. No evidence was entered to refute the Appellant's assertion that the Appellant required physical assistance with nail cutting at the time of the PAS. The evidence demonstrated that the Appellant required physical assistance with grooming at the time of the PAS, therefore, the Appellant should have been awarded an additional deficit in the area of *grooming*.

#### Transferring and Walking:

During the hearing, the Appellant's representative argued that the Facility's documentation reflected physical assistance for *transfer* and *walking*. The evidence demonstrated that on May 3,

2019, the Appellant did require physical assistance to complete tasks in those areas. The Respondent argued that the Respondent must rely on the information from the PAS when making a LTC eligibility determination. The Facility staff testified that the Appellant was independently transferring at the time of the PAS.

Although the Facility's documentation reflected additional General and Social Service Notes entered beyond July 5, 2019, no Facility notes were entered to document the Appellant's continued need for physical assistance or improvement from July 5, 2019 to the date of the July 25, 2019 PAS. The Facility's ADL logs reflected that the Appellant performed all walking in-room, locomotion on unit, bed mobility, transfer and toilet use independently from July 1 through July 31, 2019. The Facility administrator testified that the Appellant does have shortness of breath when walking more than a short distance.

The Respondent's evidence demonstrated that from April 29, 2019 through May 21, 2019, the Appellant failed to make progress toward his ambulation goals and therapy was discontinued due to his refusal to participate and "poor performance with treatment". On May 14, 2019, the Appellant's treatment goal to ambulate up to 300 feet using a wheeled walker was discontinued. At that time, the documentation reflected that the Appellant was capable of ambulating 16-20 feet with minimal assistance. The Facility staff testified that the Appellant primarily ambulated within his room with support from furniture and other objects and did not ambulate outside of his room.

The PAS indicated that the Appellant was capable of walking supervised or with an assistive device. Although the physician assessed the Appellant as a Level-2, documentation indicated that the Appellant was an ongoing fall risk and had experienced a fall on July 2, 2019.

#### Physician Recommendation and Wheeling

The physician's overall PAS recommendation was for the Appellant to remain in a nursing facility and that he should not return home. This recommendation contrasted with the physician's assessment of the Appellant's functioning deficits. Because the supporting documentation only included ADL logs to demonstrate the Appellant's functioning between July 5 and July 25, 2019, the Appellant's actual functioning ability regarding *transferring* and *walking* at the time of the PAS could not be ascertained and the Appellant's claim that he required physical assistance when walking outside of his room could not be ruled out. Because this Hearing Officer could not determine—based on the evidence entered—that the Appellant's functioning in the area of *walking* had been correctly assessed, it could not be discerned whether the Appellant should have been awarded an additional deficit in the area of *wheeling*. The Respondent failed to prove by a preponderance of evidence that the Appellant was correctly assessed as a Level-2 in the areas of *transferring* and *walking*.

The evidence demonstrated that at least one additional deficit in the area of *grooming* should have been awarded. No documentation was entered to corroborate the PAS assessment that the Appellant only required supervision/assistive device when *walking* and *transferring*. The physician's recommendation of nursing facility placement conflicted with the physician's assessment of the Appellant's deficits. The Respondent had a responsibility to make the Appellant's LTC eligibility determination based on the PAS. This Hearing Officer finds that the July 25, 2019 PAS was unreliable, therefore, the Respondent's action based on the PAS was

incorrect. As the preponderance of evidence failed to demonstrate that the Respondent took correct action when denying the Appellant's LTC eligibility based on the July 25, 2019 PAS, the matter will be remanded for a new PAS to determine the Appellant's functioning deficits.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that an applicant demonstrate five (5) functional deficits on the Pre-Admission Screening (PAS) to qualify medically for Long-Term Care (LTC) Medicaid.
- 2) Medical eligibility for LTC is based on a physician's assessment of the medical and physical needs of the individual as documented on the PAS.
- 3) Physician recommendations on the July 25, 2019 PAS conflicted with the physician's assessment of the Appellant's medical and physical needs.
- 4) The Respondent relied upon the July 25, 2019 PAS completed by the Facility to determine the Appellant's medical eligibility for LTC Medicaid.
- 5) The July 25, 2019 PAS was unreliable.
- 6) The Respondent was incorrect to deny the Appellant medical eligibility for LTC based on the July 25, 2019 PAS.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's application for Medicaid Long-Term Care (LTC) admission based on medical eligibility determined by the July 25, 2019 Pre-Admission Screening (PAS). The matter is **REMANDED** to complete a new PAS and a new determination of the Appellant's medical eligibility for LTC Medicaid. The new determination of medical eligibility will be subject to appeal from the Appellant.

ENTERED this 16<sup>th</sup> day of October 2019.

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**Tara B. Thompson**  
State Hearing Officer