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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Berkeley County DHHR
PO Box 1247
Martinsburg, WV 25402

Jolynn Marra
Interim Inspector General

September 26, 2019

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 19-BOR-2203

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Alanna Cushing, Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 19-BOR-2203**

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 [redacted]. 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 convened on September 25, 2019, on appeal filed August 12, 2019.

The matter before the Hearing Officer arises from the August 1, 2019, decision by the Respondent to deny the Appellant Medicaid benefits under the Long-Term Care (LTC) program.

At the hearing, the Respondent appeared by Alanna Cushing, Program Manager for the Bureau for Medical Services. Appearing as a witness for the Respondent was Mary Casto, RN, with KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [redacted], social worker at [redacted] ([redacted]). All witnesses were sworn, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Pre-Admission Screening (PAS) form, dated July 18, 2019
- D-2 Physician's Determination of Capacity, dated May 7, 2019
- D-4 Physician documentation: Minimum Data Set (MDS) – Version 3.0 Resident Assessment and Care Screening dated May 7, 2019; Progress Notes; ADL Record; [redacted] Order Summary Report; History and Physical dated May 7, 2019; Notice of Denial for Long-Term Care (Nursing Facility) admission, dated August 1, 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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

1) The Appellant currently resides at [redacted] a nursing facility located in [redacted].

2) A review of the Appellant's continued medical eligibility for nursing facility services was conducted on July 18, 2019, and a summary of the assessment findings were compiled in a Pre-Admission Screening (PAS) form. (Exhibit D-1)

3) The Respondent evaluated the information on the July 2019 PAS form and determined the Appellant was ineligible for continued LTC Medicaid benefits.

4) On August 1, 2019, the Respondent advised the Appellant that she was determined medically ineligible for LTC Medicaid due to a finding of deficits in only two areas – *bathing* and *walking* – and the medical eligibility requirement for LTC Medicaid is five deficits. (Exhibit D-3)

APPLICABLE POLICY

West Virginia Medicaid Manual Chapter 514, §514.6.3, explains that 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) (see appendix II) 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 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 administrating his/her own medications.

DISCUSSION

To qualify medically for the Long-Term Care Medicaid benefit, an individual must need direct nursing care twenty-four hours a day, seven days a week. The Respondent uses the PAS to determine whether an individual initially qualifies or continues to qualify for the program benefit. An individual must have a minimum of five (5) deficits identified on the PAS in order be determined medically eligible.

On July 18, 2019, the Appellant underwent a PAS to determine her continued medical eligibility for LTC Medicaid. The Appellant was assessed as having two qualifying deficits in the areas of bathing and walking. Because she did not meet the medical necessity requirement for the Long-Term Care Medicaid program, the Respondent issued a denial notice on August 1, 2019.

The Appellant testified that approximately six weeks after the July 2019 PAS was completed, she began requiring sterile dressing changes due to an ulcer on the bottom of her foot. Unfortunately, this issue did not present at the time of the July 2019 PAS and, therefore, a deficit was not established in the area of professional and technical care needs.

The Appellant also testified that she has recently gotten a port in her chest for dialysis treatment which prohibits her from bathing. However, she was awarded a deficit in bathing on the July 2019 PAS.

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

CONCLUSIONS OF LAW

1) An individual must have a minimum of five (5) deficits identified on the PAS in order to qualify for the LTC Medicaid program.

2) The Appellant was assessed as having two (2) deficits on the July 2019 PAS in the areas of bathing and walking.

3) No additional deficits were established at the hearing and therefore cannot be awarded.

4) The Respondent correctly denied the Appellant's LTC Medicaid.

DECISION

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

ENTERED this 26th day of September 2019.

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Lori Woodward, State Hearing Officer