



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

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Cabinet Secretary**

**Board of Review
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**Jolynn Marra
Interim Inspector General**

January 18, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2632

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Kelley Johnson, DHHR / Angela Signore, DHHR

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2632

**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 November 29, 2018, on an appeal filed October 23, 2018.

The matter before the Hearing Officer arises from the September 18, 2018 decision by the Respondent to deny medical eligibility for Long Term Care (Nursing Facility) Medicaid.

At the hearing, the Respondent appeared by Kelley Johnson. Appearing as a witness for the Department was Mary Casto. The Appellant was represented by his daughter, ██████████. Appearing as a witness for the Appellant was ██████████. 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 | Personal Care Pre-Admission Screening (PAS)
Assessment Date: September 17, 2018 |
| D-3 | Physician Determination of Capacity
Date signed: July 30, 2018 |
| 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 Medicaid (LTC-M).
- 2) On September 17, 2018, the Respondent assessed the Appellant's medical needs and reported the assessment findings on a Pre-Admission Screening (PAS) form. (Exhibit D-2)
- 3) By notice dated September 18, 2018, the Respondent advised the Appellant that he was determined medically ineligible for LTC-M. (Exhibit D-5)
- 4) The notice provided the reason for denial as insufficient "area of care needs (deficits) that meet the severity criteria." (Exhibit D-5)
- 5) The notice indicated the Appellant had deficits in three areas – medication administration, grooming, and bathing – and the requirement for LTC-M medical eligibility is five deficits. (Exhibit D-5)
- 6) The Appellant proposed that additional deficits should have been awarded in the areas of *eating*, *dressing*, and *vacating* a building in the event of an emergency.
- 7) The Appellant is independent in the area of *eating*.
- 8) The Appellant is independent in the area of *dressing*.
- 9) The Appellant is capable of *vacating* a building in the event of an emergency with supervision.

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 Long Term Care Medicaid (LTC-M). 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 three deficits resulting from his September 17, 2018 assessment and proposed that he should have been awarded three additional deficits in the hearing: *eating*, *dressing*, and *vacating* a building in the event of an emergency. None of the additional proposed deficits were supported by evidence or testimony.

Testimony on behalf of the Appellant indicated that he refused or required prompting to complete tasks in the areas of eating and dressing, but that the Appellant was physically able to perform these activities of daily living. This testimony supported the findings of the Respondent's assessing nurse in these areas. (Exhibit D-2)

Testimony regarding the Appellant's ability to vacate a building in the event of an emergency indicated he can do so but would need to be directed out of the building. This testimony supported the finding of the Respondent's assessing nurse that the Appellant can perform this task with supervision. (Exhibit D-2)

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

CONCLUSION OF LAW

Because the Appellant was correctly assessed with 3 deficits as defined by LTC-M policy, the Respondent correctly denied the Appellant's LTC-M 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 January 2019.

Todd Thornton
State Hearing Officer