



**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  
304-368-4420 ext. 79326**

**Jolynn Marra**  
Interim Inspector  
General

February 6, 2019



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 18-BOR-2911

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: Angela Signore, Bureau for Medical Services  
Kelley Johnson, Bureau for Medical Services

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

██████████,

**Appellant,**

**v.**

**ACTION NO.: 18-BOR-2911**

**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 January 29, 2019, on an appeal filed December 14, 2018.

The matter before the Hearing Officer arises from the November 30, 2018 determination by the Respondent to deny the Appellant medical eligibility for Long Term Care (LTC) Medicaid.

At the hearing, the Respondent appeared by Kelley Johnson, Bureau for Medical Services. Appearing on behalf of the Respondent was Mary Casto, RN, KEPRO. The Appellant appeared *pro se*. Appearing as witness for the Appellant was ██████████, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual § 514.6, 514.6.3
- D-2 DHHR Pre-Admission Screening (PAS), completed November 16, 2018
- D-3 Physician Determination of Capacity, signed October 2, 2018
- D-4 ██████████ Progress Notes, dated November 13 through November 14, 2018
- D-5 KEPRO Notice of Denial, dated November 30, 2018

**Appellant's Exhibits:**

- A-1 Letter from ██████████, dated January 23, 2019
- A-2 Report of Consultation, dated January 18, 2019
- A-3 Letter from Dr. ██████████, dated January 17, 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 following Findings of Fact are set forth.

### **FINDINGS OF FACT**

- 1) On November 16, 2018, physician [REDACTED] completed a PAS to determine the Appellant's eligibility for LTC Medicaid (Exhibit D-2).
- 2) On November 30, 2018, the Respondent issued a letter advising the Appellant that he was determined ineligible for LTC due to lacking deficits in at least five (5) areas as required by policy (Exhibit D-5).
- 3) The Appellant was awarded deficits in the areas of *Medication Administration*, *Grooming*, *Bathing*, and *Dressing* (Exhibits D-2 and D-5).
- 4) At the time of the PAS, the Appellant did not have a decubitus (Exhibits D-2, D-4, and D-5).
- 5) At the time of the PAS, the Appellant did not require physical assistance with *eating* (Exhibits D-2, D-4, and D-5).
- 6) At the time of the PAS, the Appellant was continent (Exhibits D-2, D-4, and D-5).
- 7) At the time of the PAS, the Appellant was oriented (Exhibits D-2, D-4, D-5).
- 8) At the time of the PAS, the Appellant did not require one-person assist with *transfer* or *walking* (Exhibits D-2, D-4, and D-5).
- 9) At the time of the PAS, the Appellant did not require use of a wheel chair (Exhibits D-2, D-4, and D-5).

### **APPLICABLE POLICY**

**Bureau for Medical Services Manual § 514.6.3 provides in part:**

To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours per day, 7 days per week. The Pre-Admission Screening (PAS) form is the tool used for physician certification of the medical needs of individuals applying for the Medicaid benefit.

An individual must have deficits in a minimum five areas identified on the PAS. These deficits will be determined based on the review by BMS in order to qualify for the Medicaid nursing facility benefit.

These deficits may include any combination of the following as corresponds with the PAS:

#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)

*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 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).

## **DISCUSSION**

The Appellant disagrees with the Respondent's determination that he was ineligible for LTC Medicaid due to lacking deficits in five functioning areas at the time of his physician-certified November 16, 2018 PAS. The Appellant argued that since the time of the PAS he has become incontinent, suffers from periods of disorientation, and has increased difficulty walking and vacating, and therefore, should be approved for LTC.

The Respondent had to prove that the Appellant should not have been awarded deficits in the areas of *decubitus*, *vacating*, *eating*, *continence*, *orientation*, *transfer*, *walking*, or *wheeling* at the time of the November 16, 2018 PAS completion. No evidence was presented to demonstrate that the Appellant presented with a decubitus or required a wheelchair at the time of the PAS.

### *Vacating*

To receive a deficit in the area of *vacating*, the Appellant had to be mentally or physically unable to vacate a building in the event of an emergency. The PAS reflected that the Appellant required supervision when vacating. Pursuant to policy, a deficit cannot be awarded for vacating independently or with assistance. Evidence did not establish that an additional deficit should have been awarded to the Appellant in the area of *vacating*.

### *Eating*

To receive a deficit in the area of *eating*, the Appellant had to be assessed at a Level 2 or higher and require physical assistance to get nourishment. During the hearing, the Appellant affirmed that he feeds himself. Although the Appellant's November 13, 2018 progress note indicates that he "required set up assist for eating and was independent for all other ADLs," no corroborating

evidence, witnesses, or testimony were presented to demonstrate that the Appellant needs physical assistance with eating. Evidence did not establish that an additional deficit should have been awarded to the Appellant in the area of *eating*.

#### *Continence*

To receive a deficit in the area of *continence*, the Appellant had to be assessed as totally incontinent at the time of the PAS. Testimony provided during the hearing reflected that the Appellant began experience occasional incontinence in November 2018 but did not make the facility aware of his incontinence until January 2019. Although occasional incontinence was present around the time of the November 13, 2018 PAS completion, evidence did not demonstrate that the Appellant was totally incontinent at the time of the PAS, as required for a deficit to be awarded.

#### *Orientation*

To receive a deficit in the area of *orientation*, the Appellant had to be assessed as totally disoriented or comatose. Testimony and evidence entered on behalf of the Appellant reflected that the Appellant has begun experiencing periods of disorientation and “fog” since completion of the November 13, 2018 PAS. Evidence did not demonstrate that the Appellant was totally disoriented or comatose at the time of the PAS completion. Although the Appellant’s orientation has declined since the PAS, the Board of Review can only consider deficits present at the time of the PAS completion; further, the Appellant’s occasional disorientation does not rise to the level required for a deficit to be awarded in the area of *orientation*.

#### *Transferring and Walking*

To receive deficits in the area of *transferring* and *walking*, the Appellant had to require one-person or two-person physical assistance. Evidence entered on behalf of the Appellant reflect that he believed that he may fall when walking and has developed a fear of stairs since the PAS. There was no evidence entered to demonstrate that the Appellant had a history of falls or required physical assistance when *transferring* or *walking*. Evidence did not demonstrate that additional deficits should be awarded in the areas of *transferring* or *walking*.

Because the evidence did not demonstrate that the Appellant presented with deficits in additional areas at the time of the November 16, 2018 PAS, the Respondent acted correctly in denying the Appellant’s LTC Medicaid eligibility.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that an applicant demonstrate deficits in five functioning areas to qualify medically for LTC Medicaid.
- 2) The Respondent awarded the Appellant deficits in the functioning areas of *Medication Administration, Grooming, Bathing, and Dressing*.
- 3) Evidence did not demonstrate that the Appellant presented with deficits in additional areas at the time of the November 16, 2018 PAS.
- 4) The Respondent acted correctly in denying the Appellant’s LTC Medicaid eligibility.

### **DECISION**

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

ENTERED this 6<sup>th</sup> day of February 2019.

---

**Tara B. Thompson**  
State Hearing Officer