



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 352-0805 Fax: (304) 558-1992**

**Jolynn Marra
Interim Inspector General**

December 14, 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-2244

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Terry McGee, Department Representative

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

██████████,

Appellant,

v.

Action Number: 21-BOR-2244

**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 December 1, 2021, on an appeal filed October 4, 2021.

The matter before the Hearing Officer arises from the September 28, 2021 decision by the Respondent to deny medical eligibility for Long Term Care Medicaid.

At the hearing, the Respondent appeared by Terry McGee. Appearing as a witness for the Appellant was ██████████. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|--|
| D-1 | Excerpt of BMS Provider Manual, Chapter 514 – Nursing Facility Services |
| D-2 | Notice of denial dated September 28, 2021 |
| D-3 | Pre-Admission Screening (PAS) form for the Appellant
Date of Assessment: September 26, 2021 |
| D-4 | Excerpt of Patient records for the Appellant
Completed by ██████████, MD on June 28, 2021 |

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 (LTC) Medicaid.
- 2) In conjunction with the Appellant's LTC Medicaid application, an assessment of his medical eligibility was conducted on September 26, 2021. (Exhibit D-3)
- 3) On September 28, 2021, the Respondent mailed the Appellant a notice denying the Appellant's LTC Medicaid application. (Exhibit D-2)
- 4) This notice reads, "Your request for Long-Term Care (Nursing Facility) admission has been denied. An evaluation of your current limitations related to your medical condition(s) was conducted based on the information submitted to KEPRO on the Pre-Admission Screening (PAS) form. It has been determined you are ineligible for long-term care (nursing facility) admission based upon WV Medicaid criteria." (Exhibit D-2)
- 5) This notice (Exhibit D-2) provided the reason for denial as "Eligibility for long-term care placement being funded by West Virginia Medicaid requires that you have at least five (5) areas of care needs (deficits) that meet the severity criteria. Documentation does not reflect that you have five (5) deficits at the level required; thus your request for long-term care (nursing facility) is being denied."
- 6) The notice indicated the Respondent determined the Appellant met the severity criteria in three of the five required areas of care: *grooming*, *bathing*, and *dressing*. (Exhibit D-2)
- 7) The Appellant was independent (or Level 1) in the area of *eating*. (Exhibit D-3)
- 8) The Appellant was continent (or Level 1) in the area of *continence*. (Exhibit D-3)
- 9) The Appellant was capable of *transferring* with supervision or an assistive device (or Level 2). (Exhibit D-3)
- 10) The Appellant was capable of *walking* with supervision or an assistive device (or Level 2). (Exhibit D-3)

- 11) The Appellant did not have professional or technical care needs in the area of *sterile dressings*. (Exhibit D-3)
- 12) The Appellant was capable of *vacating* a building in the event of an emergency with supervision. (Exhibit D-3)

APPLICABLE POLICY

The Bureau for Medical Services (BMS) Provider Manual, §514.6.3, states:

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 designed 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: Individual has skilled needs in one [sic] 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 LTC Medicaid, specifically related to nursing facility placement. The Respondent must show by a

preponderance of the evidence that it properly determined the Appellant did not meet medical eligibility guidelines for LTC Medicaid.

An assessment (Exhibit D-3) of the Appellant's medical conditions was conducted on September 26, 2021, and the summary of this assessment was recorded in a Pre-Admission Screening (PAS) form (Exhibit D-2). This form does not provide additional information in the form of comments or narrative. Additional medical evidence (Exhibit D-4) was not given weight because it preceded the PAS assessment by approximately three months and may not reflect changes in that time. Testimony about medical conditions subsequent to the PAS assessment were also not given weight for this reason.

The Appellant disputed the medical findings of the Respondent in the following area of care needs: *eating*, *walking*, *transferring*, *continence*, skilled needs with regard to *sterile dressings*, and the ability to *vacate* his residence in the event of an emergency. Testimony and evidence supported the Respondent's findings – as reflected on the September 26, 2021 PAS form – in each of these areas.

In the area of *eating*, the Appellant testified that he started to have numbness in his left hand approximately a month ago. The numbness has caused him to be unable to eat with his left hand. Based on the time frame provided by the Appellant, this testimony reflects a change in the Appellant's condition since the September 2021 PAS assessment. At the time of the assessment, the Respondent correctly determined the Appellant as a Level 1 in this area, which does not result in a countable area of care need deficiency.

In the area of *walking*, the Appellant testified that he uses a walker or holds the wall to walk. His testimony confirms the Respondent's assessment of Level 2, or capable of walking with supervision or an assistive device. The Appellant testified that he has fallen seven times since entering the nursing facility where he resides. The Appellant did not testify he was unable to walk, but his history of falls supports a need for supervision.

The Appellant testified that he is capable of *transferring* by himself, but that he does so slowly. The Respondent correctly assessed the Appellant as a Level 2, or capable of transferring with supervision or an assistive device, in this area. The Appellant's slow pace with transferring was the reason he provided in the area of *continence* of bladder and/or bowel. The Appellant testified that he cannot move quickly enough to the restroom to prevent accidents. He did not testify that he was unable to prevent bladder or bowel accidents stemming from an inability to recognize the urge to urinate or have a bowel movement. For this reason, the Respondent correctly assessed the Appellant as Level 1, or continent, in this area.

The Appellant testified that he has skilled, professional, or technical care needs in the area of *sterile dressings*. He testified that he has sterile dressings that need to be changed every three days. He testified that he is unable to change these dressings himself. He testified that the nurses do this for him "now" at the nursing facility, but there is no indication of this on the PAS form. Based on the Appellant's testimony this appears to have been a change in his care needs with an unclear start date. For this reason, it is considered more likely than not that the Appellant was

correctly assessed on September 26, 2021, as having no skilled needs for help with sterile dressings.

The Appellant testified that he believes he is physically unable to *vacate* a building (his home or residence). The Respondent determined that he was physically able to do so, with supervision. This assessment matched the determination in the area of *walking* – that the Appellant can do so with supervision or an assistive device. There was no testimony asserting or explaining a difference in the Appellant’s abilities in these two areas, and the Appellant’s testimony that he is physically unable to vacate a building is not supported by his testimony that he can walk using a walker or holding onto the wall. The Respondent correctly assessed the Appellant as capable of *vacating* with supervision.

Based on the reliable evidence and testimony from this hearing, the Appellant did not establish any additional deficits to the three determined by the Respondent. The policy requires at least five deficits to establish medical eligibility for LTC Medicaid. The Respondent was correct to deny medical eligibility for LTC Medicaid on this basis.

CONCLUSIONS OF LAW

- 1) Because the Appellant only had three of the five deficits required by the policy in a September 26, 2021 assessment of his area of care needs, the Appellant did not establish medical eligibility for LTC Medicaid.
- 2) Because the Appellant did not establish medical eligibility, the Respondent must deny the Appellant’s application for LTC Medicaid, specifically related to nursing facility placement.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent’s decision to deny medical eligibility for Long Term Care Medicaid, specifically for nursing facility placement.

ENTERED this ____ Day of December 2021.

Todd Thornton
State Hearing Officer