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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
304-822-6900

Jolynn Marra
Interim Inspector General

December 20, 2021

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 21-BOR-2383

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 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Terry McGee, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 21-BOR-2383**

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 was convened on December 15, 2021, on an appeal filed November 15, 2021.

The matter before the Hearing Officer arises from the November 8, 2021, decision by the Respondent to deny medical eligibility for Long Term Care Medicaid.

At the hearing, the Respondent appeared by Terry McGee, Program Manager, Bureau of Medical Services. Appearing as a witness for the Respondent was Melissa Grega, Nurse Reviewer, KEPRO. The Appellant appeared pro se. Appearing as witnesses for the Appellant were [redacted], Social Worker-[redacted] and [redacted], Office [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Bureau of Medical Services, Provider Manual, Chapter 514.6.1-514.6.3
D-2 Notice of Denial dated November 8, 2021
D-3 Pre-Admission Screening dated November 8, 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 is a current resident at [redacted].

2) On November 8, 2021, a Pre-Admission Screening (PAS) was conducted on the Appellant to determine eligibility for the Long-Term Care Medicaid program. (Exhibit D-3).

3) On November 8, 2021, the Respondent issued a Notice of Denial to the Appellant documenting a denial of request for Long-Term Care Medicaid assistance. The notice documents in part that "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 denied." (Exhibit D-2)

4) The Notice of Denial (Exhibit D-2) identifies that the Appellant required assistance and awarded deficits in the areas of walking and vacating during an emergency.

5) The Appellant is independent, Level 1 Self/Prompting, in the area of dressing.

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

Policy dictates that to qualify for Long-Term Care Medicaid benefits an individual must need direct nursing care twenty-four hours a day, seven days a week and have a minimum of five deficits identified on the PAS. The Appellant has appealed the Respondent's decision to deny medical eligibility based on required deficits. The Respondent must show by a preponderance of evidence that the Appellant did not meet the medical criteria in at least five areas of need.

On November 8, 2021, the Appellant was medically evaluated through a PAS which awarded him two qualifying deficits in the areas of walking and vacating. The Appellant contended that due to issues related to his heart and a recent surgery, he required additional assistance with dressing. While its plausible the Appellant's own health condition has an adverse effect on his ability to dress himself, there was no supporting testimony which indicated the severity to which assistance is required in the contested area. The Appellant indicated that he was able to perform many health areas by himself or with prompting. The Appellant's contention of one additional deficit does not meet the minimum requirement of five deficits required by policy; therefore, any awarded deficit in the contested area would be moot to his overall medical eligibility for the program.

Because the Appellant did not meet the medical necessity requirement of five deficits on the PAS, the Respondent was correct in its decision to deny the Appellant's request for Long-Term Care Medicaid assistance.

CONCLUSIONS OF LAW

1) An individual must have a minimum of five (5) deficits identified on the Pre-Admission Screening to be determined eligible for the Long-Term Care Medicaid program.

2) The Pre-Admission Screening assessed the Appellant with two deficits in the areas of walking and vacating, failing to meet the five areas of need for medical eligibility standards of the program.

3) The Respondent was correct it is decision to deny medical eligibility.

DECISION

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

ENTERED this _____ day of December, 2021.

_____

Eric L. Phillips
State Hearing Officer