



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

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Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector General

November 15, 2021

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

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2161

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 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, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

CC: Britany Mullins, Bureau for Medical Services
Terry McGee II, Bureau for Medical Services

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-2161

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on October 26, 2021 on an appeal filed with the Board of Review on September 28, 2021.

The matter before the Hearing Officer arises from the Respondent's September 21, 2021 decision to deny the Appellant's eligibility for Medicaid Long-Term Care (hereafter, LTC) admission.

At the hearing, the Respondent appeared by Terry McGee, ██████████ DHHR. Appearing as a witness on behalf of the Respondent was ██████████. The Appellant appeared *pro se* and was represented by ██████████. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

None

Appellant's Exhibits:

- A-1 ██████████ Order Recap Report
- A-2 Minimum Data Set (MDS) Residential Assessment and Care Screening, dated September 16, 2021
- A-3 ██████████ Documentation Survey Report, dated September 2021

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 July 23, 2021, the Appellant was admitted to [REDACTED] (hereafter, Facility) from an acute hospital (Exhibits A-1 and A-2).
- 2) On September 21, 2021, the Respondent issued a notice advising the Appellant that her request for Medicaid LTC admission had been denied.
- 3) The denial of the Appellant's Medicaid LTC eligibility was based on information submitted to [REDACTED] on the Pre-Admission Screening (PAS) form. The PAS reflected that the Appellant had zero areas of care needs.
- 4) The Appellant has lower extremity impairment on one side that interferes with daily functions or places the Appellant at risk of injury (Exhibit A-2).
- 5) The Appellant uses mobility devices including walker, wheelchair, and limb prosthesis (Exhibit A-2).
- 6) The Appellant is prescribed oral and injected medication (Exhibits A-1 through A-2).
- 7) At the time of the Respondent's September 21, 2021 Medicaid LTC denial, the Appellant was physically unable to independently vacate the building in the event of an emergency (Exhibits A-2 and A-3).
- 8) At the time of the Respondent's September 21, 2021 Medicaid LTC denial, the Appellant required physical assistance with bathing, dressing, and grooming (Exhibits A-2 and A-3).
- 9) At the time of the Respondent's September 21, 2021 Medicaid LTC denial, the Appellant was not capable of independently administering her own medication (Exhibit A-1).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 514.5.3 provides in part:

To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, seven days a week. The BMS has designated a tool known as the Pre-Admission Screening (PAS) form 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 a BMS designee in order to

qualify for the Medicaid nursing facility benefit.

These deficits may include the following (numbers represent questions on the PAS form):

- #25 In the event of an emergency, the individual is d) physically unable to vacate a building. a) independently and b) with supervision are not considered deficits
- #26 Functional abilities of the individual in the home
 - Bathing, Dressing, Grooming: Level 2 or Higher (physical assistance or more)
- #28 Individual is not capable of administering her own medications

DISCUSSION

The Respondent denied the Appellant's eligibility for Medicaid LTC admission because the PAS did not identify any areas of care needs that met the policy eligibility criteria. Although the PAS was not submitted as evidence for review, neither party contested that a PAS had been completed and signed by the physician pursuant to the policy. The Appellant argued that the Appellant should have been awarded deficits in the areas of *Requires Emergency Assistance Vacating, Bathing, Dressing, Grooming, and Medication Administration*. The Respondent argued that Medicaid LTC eligibility is determined based on the PAS submitted by the Facility and that the PAS did not indicate the Appellant met the severity criteria for any of the areas of care needs.

The Respondent bears the burden of proof. To prove that the Respondent correctly denied the Appellant's eligibility for Medicaid LTC admission, the Respondent had to prove by a preponderance of the evidence that the Appellant did not have deficits in the areas of *Requires Emergency Assistance Vacating, Bathing, Dressing, Grooming, and Medication Administration* at the time of the Respondent's denial.

Requires Emergency Assistance Vacating

To be awarded a deficit in this area, the Appellant must be physically unable to independently vacate the building in the event of an emergency. The Respondent witness testified that the PAS indicated the Appellant was able to vacate the building independently. The Appellant's representative argued that to exit the building, the Appellant would have to open heavy doors while simultaneously using a manual wheelchair to traverse through a doorway with a lipped drop. The Respondent did not submit any evidence to rebut the Appellant's argument. The Appellant's evidence verified that the Appellant uses a manual wheelchair for locomotion on and off the unit. The MDS established that the Appellant required physical assistance from sit to stand and walking. The preponderance of the evidence verified that at the time of the Respondent's denial, the Appellant was physically unable to independently vacate the building in the event of an emergency.

Bathing, Dressing, Grooming

To be awarded deficits in these areas, the Appellant must require physical assistance. The Respondent's witness testified that the PAS indicated the Appellant was independent in these areas. The MDS indicated that the Appellant required physical assistance in the areas of *Bathing* and *Grooming*. The Appellant's evidence verified that the Appellant required one-person physical assistance with *Bathing* on 19 days, *Dressing* on two days, and *Grooming* on 12 days between September 1 and September 21, 2021. The Appellant's evidence verified that the Appellant required two-person physical assistance with *Dressing* on two days between September 1 and September 21, 2021. During the hearing, the Appellant testified that she needed physical assistance with standing and pulling up pants when dressing. The Respondent did not submit any evidence to rebut the Appellant's evidence. The preponderance of the evidence verified that at the time of the Respondent's denial, the Appellant required physical assistance in the areas of *Bathing*, *Dressing*, and *Grooming*.

Medication Administration

To be awarded a deficit in this area, the Appellant had to be incapable of administering her own medication. The Respondent's witness testified that the PAS indicated that the Appellant was capable of administering her own medication. The evidence verified that the Appellant is prescribed both oral and injected medications. The evidence reflected that at the time of the Respondent's denial, the Appellant had an active order from her attending physician that she may not administer her own medications. The MDS Section S2000 was marked, "no," to "Resident is capable of self-administration of medications." The Respondent did not submit any evidence to rebut the Appellant's evidence. The preponderance of the evidence verified that at the time of the Respondent's denial, the Appellant was incapable of administering her own medication.

CONCLUSIONS OF LAW

- 1) To be eligible for Medicaid LTC, the Appellant had to demonstrate five (5) functional deficits.
- 2) The preponderance of evidence verified that the Appellant had deficits in the areas of *Requires Emergency Assistance Vacating, Bathing, Dressing, Grooming, and Medication Administration* at the time of the Respondent's September 21, 2021 denial of the Appellant's eligibility for Medicaid LTC.
- 3) The Respondent incorrectly denied the Appellant's eligibility for Medicaid LTC.

DECISION

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

ENTERED this 15th day of November 2021.

Tara B. Thompson, MLS
State Hearing Officer