



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

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Jolynn Marra
Inspector General

February 8, 2022



RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2518

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

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-2518

**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 January 25, 2022 on an appeal filed with the Board of Review on December 22, 2021.

The matter before the Hearing Officer arises from the Respondent's December 13, 2021 decision to deny the Appellant medical eligibility for Medicaid Long-Term Care (hereafter, LTC) admission.

At the hearing, the Respondent appeared by Terry McGee, Bureau for Medical Services. Appearing as a witnesses on behalf of the Respondent was Melissa Grega, RN, KEPRO. The Appellant appeared by ██████████, his daughter. Appearing as witnesses on behalf of the Appellant were ██████████, the Appellant's daughter; ██████████, ██████████ Care Center, Social Worker; ██████████, ██████████ Care Center, Nurse; ██████████, ██████████ Care Center, Therapy Director; and ██████████, ██████████ Care Center, Business Office Manager. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Chapter 514 Excerpt
- D-2 Notice of Denial for Long-Term Care, dated December 13, 2021
- D-3 Pre-Admission Screening, submitted December 13, 2021
- D-4 ██████████ Care Center Diagnosis Report
- D-5 ██████████ Care Center Medication Review Report
- D-6 Ophthalmology Office Report

Appellant's Exhibits:

A-1 [REDACTED] Center Ophthalmology Records

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 8, 2021, the Appellant was admitted to [REDACTED] Care Center (hereafter, Facility) (Exhibit D-5).
- 2) On December 13, 2021, the Respondent issued a notice advising the Appellant that his request for Medicaid LTC admission had been denied (Exhibit D-2).
- 3) The denial of the Appellant's Medicaid LTC eligibility was based on information submitted to KEPRO on a December 13, 2021 Pre-Admission Screening (PAS) form signed by [REDACTED] M.D., Facility Physician. The PAS reflected that the Appellant had three areas of care needs that met the severity criteria: *Medication Administration, Grooming, and Bathing* (Exhibits D-2 and D-3).
- 4) Upon admission to the Facility, the Appellant had diagnoses that included Alzheimer's Disease, Seizures, and Legal Blindness (Exhibits D-4, D-5, D-6, and A-1).
- 5) At the time the PAS was completed, the Facility had not received medical records affirming the Appellant's diagnosis of Legal Blindness or extent of his vision impairments (Exhibit A-1).
- 6) On December 1, 2021, the Appellant had onset of Unspecified Abnormalities of Gait and Mobility and Muscle Weakness diagnoses that remained active at the time the PAS was completed (Exhibits D-4 and A-1).
- 7) At the time of the PAS, the Appellant used a walker (Exhibit D-4).
- 8) On December 6, 2021, the Appellant had onset of Functional Urinary Incontinence and Unsteadiness on Feet diagnoses that remained active at the time the PAS was completed (Exhibits D-4 and A-1).
- 9) The Appellant was prescribed medications for Alzheimer's Disease, Seizures, and Urinary Incontinence (Exhibits D-4 and D-5).
- 10) At the time of the PAS, the Appellant had an active order for "Incontinence Products Urinary/Bowel" (Exhibit D-5).

- 11) On November 16, 2021, [REDACTED] M.D. recorded a Brief Interview for Mental Status (BIMS) score of 10, moderately impaired cognition, for the Appellant (Exhibit D-4).
- 12) At the time of the PAS, the Appellant required one-person physical assistance with bed mobility, dressing, and transfers (Exhibit D-4).
- 13) At the time of the PAS, the Appellant was physically unable to vacate the Facility in the event of an emergency (Exhibit D-4).
- 14) At the time of the PAS, the Appellant did not have deficits that met the severity criteria in the areas of *Decubitus, Continence, Orientation, Walking, Wheeling, or Professional and Technical Care Needs* (Exhibits D-1 through D-6 and A-1).

APPLICABLE POLICY

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

- #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.
- #26:
 - 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-person assistance)
 - Walking: (Level 3 or higher (one person assistance)
 - Wheeling: Level 3 or higher (must be Level 3 or 4 on walking)

- #27: Individual has skilled needs in one of these areas : suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations

DISCUSSION

The Respondent denied the Appellant's eligibility for Medicaid LTC admission because the PAS did not identify 5 areas of care needs that met the policy eligibility criteria. In addition to the three deficits awarded, the Appellant's representative argued that the Appellant should have received deficits in functioning areas related to self-care, vision, hearing, *Orientation* and *Requires Emergency Assistance*. 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 additional area 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 *Decubitus*, *Dressing*, *Continence*, *Orientation*, *Transfer*, *Walking*, *Wheeling*, *Requires Emergency Assistance/Vacating*, or *Professional and Technical Care Needs*. The evidence or testimony was presented to verify that the Appellant had a decubitus at the time of the PAS.

Dressing:

To be awarded a deficit in this area, the Appellant must score a Level 2 on the PAS and require physical assistance or more when dressing. During the hearing, the Appellant's witness testified that due to the Appellant's vision barriers, the Appellant required assistance with grooming, bathing, and dressing. While the PAS indicated that the Appellant was able to complete dressing by himself or with prompting, the physical records submitted for review indicated that the Appellant required one-person physical assistance when dressing. Because the Appellant required physical assistance with dressing at the time of the PAS, the Appellant should have been awarded a deficit in the area of *Dressing*.

Continence Bladder/ Bowel:

To be awarded a deficit in these areas, the Appellant must score a Level 3 or higher and be totally incontinent. During the hearing, the Appellant's witness testified that the Appellant had occasional incontinence. The Facility's records indicated the Appellant required one-person physical assistance with toileting. While the evidence established that Appellant had a diagnosis, medication, and supply order for incontinence issues, the preponderance of evidence failed to establish that the Appellant had total bowel incontinence. Because the Appellant was not totally incontinent of bowel or bladder at the time of the PAS, the Appellant should not have been awarded a deficit in the area of *Continence*.

Orientation

To be awarded a deficit in this area, the Appellant must score a Level 3 and be totally disoriented or comatose. The evidence verified that the Appellant takes medication for a diagnosis of

Alzheimer's Disease. The testimony provided indicated that the Appellant is intermittently disoriented due to vision barriers. The Facility's physician record indicated that the Appellant had moderately impaired cognition at the time of the PAS. Because the preponderance of evidence failed to establish that the Appellant was totally disoriented or comatose, the Appellant should not have been awarded a deficit in the area of *Orientation*.

Transfer

To be awarded a deficit in this area, the Appellant must score a Level 3 and require one person or two-person assistance when transferring. While the PAS indicated that the Appellant was able to independently transfer, the physician's records indicated that the Appellant required one-person assistance with transfer. The evidence further verified the onset of conditions including Unspecified Abnormalities of Gait and Mobility, Muscle Weakness, and Unsteadiness on Feet which corroborate the physician's record that the Appellant required one-person assistance with transfer. Because preponderance of the evidence established that the Appellant required one-person assistance with transfer at the time of the PAS, the Appellant should have been awarded a deficit in the area of *Transfer*.

Walking

To be awarded a deficit in this area, the Appellant must score a Level 3 and require one-person or two-person assistance with walking. The PAS indicated that the Appellant scored a Level 1, independent in the area of walking. The evidence verified that the Appellant ambulated with a walker and should have scored a Level 2, Supervised/Assistive Device in the area of *walking*. No evidence was entered to verify that the Appellant required one or two-person assistance when walking.

Wheeling

To be awarded a deficit in this area, the Appellant must score a Level 3 and must be a Level 3 in the area of *walking*. No evidence was entered to verify that the Appellant used a wheelchair. The preponderance of evidence verified that the Appellant did not meet severity criteria to be awarded a deficit in the area of *Wheeling*.

Requires Emergency Assistance/Vacating:

To be awarded a deficit in this area, the Appellant had to be mentally or physically unable to vacate the building in the event of emergency. On the PAS, the Appellant was determined to be capable of vacating the building with supervision. When the PAS was completed, the Facility had not yet obtained records affirming the Appellant's diagnosis of Legal Blindness or the extent of his vision impairments. During the hearing, the Facility staff testified that due to the Appellant's peripheral vision barriers and intermittent disorientation in the hallways due to his vision impairment, he could not independently vacate the building in the event of emergency. Because the preponderance of evidence verified the Appellant was physically unable to vacate the building in the event of an emergency, the Appellant should have been awarded a deficit in the area of *Requires Emergency Assistance/ Vacating*.

Professional and Technical Care Needs

To be awarded a deficit in this area, the Appellant had to require skilled needs in one or more areas, including suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations. No evidence was entered to indicate that the Appellant had any of these skilled needs. The preponderance of evidence verified that the Appellant did not meet severity criteria to be awarded a deficit in the area of *Professional and Technical Care Needs*.

CONCLUSIONS OF LAW

- 1) To be eligible for Medicaid LTC, the Appellant had to demonstrate five (5) functional deficits at the time of the PAS.
- 2) The preponderance of evidence verified that the Appellant had deficits in the areas of *Medication Administration, Grooming, Bathing, Dressing, Transfer, and Requires Emergency Assistance/Vacating*.
- 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 medical eligibility for Medicaid Long-Term Care admission.

ENTERED this 8th day of February 2022.

Tara B. Thompson, MLS
State Hearing Officer