



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

July 20, 2023



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-2018

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Lori Tyson, WVDHHR  
Terry McGee, WVDHHR

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

[REDACTED]

**Appellant,**

v.

**Action Number: 23-BOR-2018**

**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 July 18, 2023.

The matter before the Hearing Officer arises from the May 30, 2023, decision by the Respondent to deny benefits under the Long-Term Care Medicaid Program.

At the hearing, the Respondent appeared by Terry McGee, Program Manager for Long-Term Care Facilities, Bureau for Medical Services, WVDHHR. Appearing as a witness for the Respondent was Melissa Grega, Registered Nurse/Nursing Facility Reviewer, KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were [REDACTED], Social Worker, [REDACTED], and [REDACTED] Registered Nurse, [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision dated May 30, 2023
- D-2 Bureau for Medical Services Policy Chapters 514.6.1, 514.6.2, and 514.6.3
- D-3 Documentation from [REDACTED]
- D-4 Pre-Admission Screening Form dated May 30, 2023
- D-5 Information from [REDACTED] D.O.
- D-6 [REDACTED] Order Summary Report

**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 currently a patient at [REDACTED]
- 2) The Appellant applied for Long-Term Care Medicaid benefits.
- 3) A Pre-Admission Screening (PAS) was completed for the Appellant on May 30, 2023, to determine the Appellant's medical eligibility for Long-Term Care Medicaid (Exhibit D-4).
- 4) On May 30, 2023, the Respondent sent the Appellant a Notice of Decision indicating that her request for Long-Term Care Medicaid benefits was denied (Exhibit D-1).
- 5) The Notice indicated that the Appellant had three (3) qualifying deficiencies as assessed on the PAS in the functional areas of medication administration, physical assistance with bathing, and inability to vacate the building in the event of an emergency (Exhibit D-1).
- 6) The Appellant's diagnoses include acute and chronic respiratory failure with hypoxia, chronic obstructive pulmonary disease with acute exacerbation, hypertensive heart disease with heart failure, respiratory failure, diabetes, schizoaffective disorder, bipolar disorder, anxiety disorder, depression, and morbid obesity (Exhibits D-3, D-4, D-5, and D-6).

**APPLICABLE POLICY**

***Bureau for Medical Services Policy Manual Chapter 514.5.3*** states that to qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, seven days a week. BMS has designated a tool known as the Pre-Admission Screening form (PAS) to be utilized for physician certification of the medical needs of individuals applying for the Medicaid benefit (Exhibit D-2).

An individual must have a minimum of five (5) deficits as identified on the PAS 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 assists 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.) <b>Do not count outside the home.</b>

#27: Individual has skilled needs in one of 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 an individual must have a minimum of five (5) deficits as identified on the PAS to qualify for the Long-Term Care Medicaid Program.

The Appellant received three (3) deficits on a PAS completed in May 2023, which resulted in denial of Long-Term Care Medicaid benefits.

During the hearing, the Appellant testified that she uses continuous oxygen, becomes short of breath, and experiences weakness. She stated that she requires physical assistance with dressing, citing a need for help with putting on her bra, pants, and socks. In addition, the Appellant asserted that she requires physical assistance with grooming as she cannot shave her legs or cut her toenails. She requires an assistive device (walker) for limited ambulation and needs assistance maneuvering her wheelchair through doorways. She also utilizes her walker to transfer. The Appellant testified that she requires assistance with wiping following a bowel movement because she has difficulty keeping herself clean.

The Respondent's representatives did not contest the Appellant's testimony. It should be noted that the PAS adequately reflected the Appellant's stated abilities in walking and wheeling; however, deficits cannot be awarded at those levels under policy. Melissa Grega, Nursing Facility Reviewer for KEPRO, testified that the need for hygiene care would be considered a deficit in the area of bowel continence.

Based on information provided during the hearing, additional deficits are awarded to the Appellant in the areas of physical assistance with dressing and grooming, as well as bowel continence. The Appellant received a deficit for requiring total care with bathing on the PAS. It is reasonable to believe that she would also have difficulty performing dressing and grooming tasks unassisted based on her symptoms and diagnoses. In addition, the Respondent's witness stated that inability to clean sufficiently after bowel movements can be considered a deficit in bowel continence.

As the Appellant has been awarded three (3) additional deficits based on information provided during the hearing, medical eligibility for the Long-Term Care Medicaid Program has been established.

### **CONCLUSIONS OF LAW**

- 1) Policy states that an individual must receive at least five (5) deficits on the PAS to qualify medically for the Long-Term Care Medicaid Program.
- 2) The Appellant was awarded three (3) deficits on a PAS completed in May 2023.
- 3) Three (3) additional deficits were awarded to the Appellant in the functional areas of physical assistance with dressing, physical assistance with grooming, and bowel continence based on information provided during the hearing.
- 4) As six (6) deficits in functional areas have been identified, the Appellant is medically eligible for the Long-Term Care Medicaid Program.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's May 2023 action to deny the Appellant's medical eligibility under the Long-Term Care Medicaid Program.

**ENTERED this 20th day of July 2023.**

---

**Pamela L. Hinzman  
State Hearing Officer**