



**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**

**Christopher G. Nelson
Interim Inspector General**

August 16, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-2272

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: 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**

██████████,

Appellant,

v.

Action Number: 23-BOR-2272

**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 August 15, 2023.

The matter before the Hearing Officer arises from the July 7, 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/Nurse Reviewer, KEPRO. The Appellant was represented by ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision dated July 7, 2023
- D-2 Bureau for Medical Services Provider Manual Chapter 514, Nursing Facility Services, policy information sheet
- D-3 Psychiatric Evaluation completed on May 29, 2023
- D-4 Pre-Admission Screening assessment completed on June 19, 2023 (typed copy)
- D-5 Pre-Admission Screening assessment completed on June 19, 2023 (handwritten copy)

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 resident of [REDACTED].
- 2) A Pre-Admission Screening (PAS) was completed for the Appellant on June 19, 2023, by [REDACTED] to determine the Appellant's medical eligibility for Long-Term Care Medicaid benefits (Exhibits D-4 and D-5).
- 3) On July 7, 2023, the Respondent sent the Appellant a Notice of Decision indicating that her request for Long-Term Care Medicaid benefits was denied because five (5) functional deficits were not identified on her PAS (Exhibit D-1).
- 4) The Notice indicated that the Respondent identified one (1) deficit for the Appellant in the functional area of inability to administer medications (Exhibit D-1).

APPLICABLE POLICY

Bureau for Medical Services Policy Manual Chapter 514.5.3 (D-2) 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. The BMS has designated a tool known as the Pre-Admission Screening (PAS) form (Appendix B) 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 (5) deficits as identified on the PAS to qualify for the 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.) **Do not count outside the home.**

#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 one (1) deficit on a PAS completed in June 2023, which resulted in denial of Long-Term Care Medicaid benefits.

[REDACTED] testified that the Appellant's condition is deteriorating, and she requires additional prompts to complete tasks due to her neurocognitive status.

While the Appellant's deteriorating condition is noted, zero (0) additional deficits can be awarded to the Appellant based on information presented during the hearing. The Appellant needs additional prompts to complete tasks, but there is no indication that she requires physical assistance in the functional areas considered for medical eligibility. As a result, the Appellant does not meet medical eligibility criteria for the Long-Term Care Medicaid Program.

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 one (1) deficit on a PAS completed in June 2023.
- 3) No additional deficits were awarded to the Appellant based on information provided during the hearing.
- 4) The Appellant does not meet medical eligibility requirements for the Long-Term Care Medicaid Program.

DECISION

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

ENTERED this 16th day of August 2023.

**Pamela L. Hinzman
State Hearing Officer**