



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

**Jeffrey H. Coben, MD  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

May 24, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1578

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**

████████████████████,

**Appellant,**

**v.**

**Action Number: 23-BOR-1578**

**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 May 17, 2023.

The matter before the Hearing Officer arises from the March 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/Nurse Reviewer, KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Appellant's friend; ██████████, Appellant's son; and ██████████, Appellant's son. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision dated March 30, 2023, featuring hand-written notes from Appellant
- D-2 Chapter 514, Nursing Facility Services, policy information sheet
- D-3 Pre-Admission Screening assessment completed on March 29, 2023
- D-4 ██████████ Order Summary Report dated March 30, 2023

**Appellant's Exhibits:**

- A-1 Report of Consultation dated June 23, 2022
- A-2 Report of Consultation dated February 20, 2023
- A-3 Outpatient Referral Order dated March 22, 2022

- A-4 Appointment information (encounter date- September 1, 2022)
- A-5 [REDACTED] Test Results (procedure date- August 10, 2021)
- A-6 MRI Spine Cervical Test Results (procedure date- September 15, 2021) and MRI Shoulder Left Test Results (procedure date- October 17, 2021)
- A-7 CT Abdomen and Pelvis Test Results dated April 7, 2022, MRI Humerus Test Results dated April 8, 2022, and [REDACTED] Documentation Survey Report dated April 24, 2023
- A-8 Shoulder Lt Routine Test Results dated April 4, 2022, and Bone Survey Metastases Test Results dated August 4, 2022
- A-9 Chest PA and Lat Test Results dated April 4, 2022

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 March 29, 2023, to determine the Appellant's medical eligibility for Long-Term Care Medicaid benefits (Exhibit D-3).
- 4) On March 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 zero (0) deficiencies in the functional areas assessed on the PAS (Exhibit D-1).
- 6) The Appellant has a chronic rotator cuff tear, resulting in a limited range of motion in her left shoulder (Exhibits A-1, A-2 and A-8).

### **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. 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 (Exhibit D-2).

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.) <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 zero (0) deficits on a PAS completed in March 2023, which resulted in denial of Long-Term Care Medicaid benefits.

During the hearing, the Appellant testified that she needs assistance with washing certain areas of her body and requires help wiping after bowel movements due to her limited range of shoulder mobility. She also indicated that she requires assistance with meal preparation. The Appellant contended that the physician who completed the March 2023 PAS did not examine her.

The Appellant is currently a patient at [REDACTED] and hopes to be released to her mobile home, which is not yet ready for inhabitation. She stated that she needs someone to assist her in the household with cooking and other activities.

One (1) deficit is awarded to the Appellant for physical assistance with bathing based on testimony provided during the hearing and medical documentation verifying that the Appellant has a limited range of motion in her shoulder. No deficit can be awarded for bowel continence as there was no testimony to suggest that the Appellant is incontinent of bowel. She simply requires assistance with wiping due to her limited range of motion.

As the Appellant has been awarded one (1) deficit, she continues to lack the five (5) required deficits to establish medical eligibility 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 zero (0) deficits on a PAS completed in March 2023.
- 3) One (1) deficit for physical assistance with bathing was awarded to the Appellant based on information provided during the hearing.
- 4) The Appellant is not medically eligible for the Long-Term Care Medicaid Program.

### **DECISION**

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

**ENTERED this 24th day of May 2023.**

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**Pamela L. Hinzman**  
**State Hearing Officer**