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

Jeffrey H. Coben, M.D.
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

February 17, 2023

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 23-BOR-1035

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29
cc: Terry McGee II, Bureau for Medical Services
Lori Tyson, Bureau for Medical Services

BEFORE THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES BOARD OF REVIEW

IN THE MATTER OF: **ACTION NO.: 23-BOR-1035**

[redacted],

Appellant,

v.

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' (DHHR) Common Chapters Manual. This fair hearing was convened on February 09, 2023 on an appeal filed January 09, 2023.

The matter before the Hearing Officer arises from the January 03, 2023, decision to deny the Appellant medical eligibility for Medicaid Long-Term Care (LTC) facility admission.

At the hearing, the Respondent appeared by Terry McGee II, Program Manager I, Bureau for Medical Services Appearing as a witness on behalf of the Respondent was Melissa Grega, RN, KEPRO. The Appellant appeared *pro se.* Appearing as a witness for the Appellant was [redacted], Social Worker, [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 West Virginia Department of Health and Human Resources (WV DHHR) Notice of Denial for Medicaid LTC, dated January 03, 2022
D-2 Bureau for Medical Services (BMS) Chapter 514 Nursing Facility Services Policy
D-3 Pre-Admission Screening (PAS), created January 02, 2023
D-4 Nursing Facility Subsequent Visit Report, dated December 15, 2022
D-5 [redacted] Order Summary Report for [redacted], dated January 02, 2023

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 recipient of Long-Term Care (LTC) Medicaid benefits and resides at [redacted]. (Exhibits D-1, D-3, D-4, and D-5)

2) On January 03, 2023, a PAS was submitted to determine the Appellant's eligibility for continued LTC services. (Exhibits D-1 and D-3)

3) By notice dated January 03, 2023, the Respondent advised the Appellant that he was "ineligible for long-term care (nursing facility) admission based upon WV Medicaid criteria." (Exhibit D-1)

4) The January 03, 2023 denial was based on insufficient areas of care needs, or deficits, that "meet the severity criteria." The notice indicated the Appellant had three (3) deficits, and the policy requires at least five (5) deficits. (Exhibits D-1 through D-3)

5) The Appellant was assessed as having deficits in the areas of *grooming, bathing,* and *dressing*. (Exhibits D-1 and D-3)

6) At the time of the PAS, the Appellant did not have deficits that met the severity criteria in the areas of *eating, continence, orientation, transfer, walking, wheeling, professional and technical care needs,* or *administering medication*. (Exhibits D-1 through D-5).

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 be any of 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. 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

Pursuant to policy, all Long-Term Care (LTC) programs require a determination of medical eligibility. To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care twenty-four (24) hours a day, seven (7) days a week. The Bureau for Medical Services has designated a tool known as the Pre-Admission Screening (PAS) to be utilized for physician certification of the medical needs of individuals applying for LTC Medicaid benefits. Per policy, the Appellant must have five (5) functional deficits at the time the PAS was completed in order to qualify medically for nursing facility services.

KEPRO, the Utilization Management Contractor (UMC) responsible for conducting medical necessity reviews of the PAS, assessed the Appellant with three (3) deficits in the functional areas of *grooming, bathing,* and *dressing*. On January 03, 2023, a Notice of Denial for LTC Medicaid benefits was sent to the Appellant advising that he did not meet the eligibility criteria threshold of five (5) functional deficits required by policy to qualify for nursing facility services. The Respondent had to demonstrate by a preponderance of evidence that the UMC followed policy in determining the Appellant's medical eligibility for LTC Medicaid benefits.

During the hearing, the Appellant and his witness [redacted], testified that the Appellant needs help with "walking, bathing, and going to the bathroom." The Appellant's witness further testified that the Appellant would be very slow to evacuate because he becomes fatigued; and on occasions when the Appellant uses his wheelchair, situational assistance is necessary. Additionally, [redacted] contends that the Appellant does now require therapy.

To be eligible for a deficit in the functional areas of *eating*, the PAS had to reflect a Level 2 or higher functioning ability that requires physical assistance, or more. Pursuant to the PAS, the Appellant is able to complete tasks in the functioning area of *eating* at a Level 1, independently or with prompting. Because the preponderance of evidence failed to verify the Appellant required physical assistance in the functional area of *eating*, an additional deficit cannot be awarded.

To be eligible for a deficit in the functional areas of *continence, orientation, transfer, walking,* and *wheeling*, the PAS had to reflect a Level 3 or higher functioning ability that requires physical assistance, or more. To be eligible for a deficit in the areas of *orientation* and *continence*, the PAS had to reflect the Appellant as being totally disoriented/comatose, and incontinent. To be eligible for a deficit in the functioning area of *orientation*, the PAS had to reflect a Level 3 or higher functioning ability — totally disoriented, comatose. Pursuant to the PAS, the Appellant was oriented. No evidence was entered to establish that the Appellant was totally disoriented or comatose at the time the PAS was completed. To be eligible for a deficit in the functioning area of *continence*, the PAS had to reflect a Level 3 or higher functioning ability — incontinence. Pursuant to the PAS, the Appellant is continent. No evidence was entered to establish that the Appellant presented with Level 3 or higher incontinence.

To be awarded a deficit in the area of *transfer*, the Appellant must require one or two person assistance in the home when transferring. Pursuant to the PAS, the Appellant was assessed as a Level 2, supervised/assistive device. In the functional area of *walking,* the Appellant must require one person physical assistance in the home. Pursuant to the PAS, the Appellant was Level 2, requires supervision/assistive device. In the functioning area of *wheeling,* the Appellant must require a Level 3 or higher functioning ability, and establish a Level 3 or 4 in the functioning area of *walking*. Pursuant to the PAS, the Appellant was Level 2 requires supervision/assistive device in the functional area of *walking*, and Level 3, situational assistance, in the functional area of *wheeling.* Because the preponderance of evidence failed to verify the Appellant required physical assistance in the functional areas of *continence, orientation, transfer, walking,* and *wheeling*, additional deficits cannot be awarded in these areas.

To be awarded a deficit in the area of *professional and technical care needs*, the Appellant had to require skilled needs in one or more areas of suctioning, trach-eostomy, ventilator, parenteral fluids, sterile dressings, or irrigations at the time the PAS was completed. At that time, the Appellant did not require skilled needs in any of these areas. To be eligible for a deficit in the functional area of *administering medication*, the Appellant must not be capable of administering his own medication. Pursuant to the PAS, the Appellant is competent to manage his own medications. Because the preponderance of evidence failed to verify the Appellant required physical assistance in the functional areas of *professional and technical care needs* and *administering medication*, additional deficits cannot be awarded in these areas.

After a review of the testimony and evidence presented, the Appellant did not demonstrate that he should be awarded additional functional deficits. Because the Appellant qualifies for three (3) functional deficits, which is below the five (5) deficit threshold to establish continued medical eligibility, the Appellant no longer meets the medical criteria to continue receiving Long-Term Care Medicaid benefits.

CONCLUSIONS OF LAW

1) Policy requires that an applicant must demonstrate five (5) functional deficits on the Pre-

Admission Screening (PAS) to qualify medically for Long-Term Care (LTC) Medicaid benefits.

2) The Appellant was correctly assessed with three (3) deficits in the functional areas of *grooming, bathing,* and *dressing.*

3) Because the Appellant demonstrated having less than five (5) deficits in the functional areas required by policy for medical eligibility for LTC Medicaid benefits, the Appellant does not meet the medical criteria to continue receiving Long Term Care Medicaid benefits.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's January 03, 2023, application for Long-Term Care (LTC) Medicaid benefits.

ENTERED this *17th* day of February 2023.

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Angela D. Signore
State Hearing Officer