

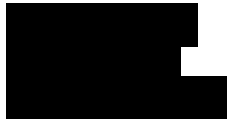


**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

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

**Christopher G. Nelson
Interim Inspector General**

September 28, 2023



RE: [REDACTED] **v. WVDHHR**
ACTION NO.: 23-BOR-2723



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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Terry McGee, BMS

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

[REDACTED],

Appellant,

v.

Action Number: 23-BOR-2723

**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 September 27, 2023, on appeal filed September 1, 2023.

The matter before the Hearing Officer arises from the July 5, 2023 decision by the Respondent to deny the Appellant's application for Long Term Care medical assistance.

At the hearing, the Respondent appeared by Terry McGee, Program Manager, Bureau of Medical Services. Appearing as a witness for the Respondent was Melissa Grega, Nurse Reviewer, KEPRO. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial for Long-Term Care (Nursing Facility)
- D-2 Bureau of Medical Services, Provider Manual, Chapter 514.6.1-514.6.3
- D-3 Pre-Admission Screening dated July 4, 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 resident at [REDACTED]
- 2) The Appellant's medical eligibility was assessed for Long-Term Care (LTC) Medicaid assistance.
- 3) On July 4, 2023, a Pre-Admission Screening (PAS), a requirement to determine medical eligibility for LTC Medicaid assistance, was conducted by [REDACTED] (Exhibit D-3)
- 4) The PAS documented zero deficits in the assessed life areas. (Exhibit D-3)
- 5) A minimum of five deficits in the assessed life areas on the PAS are required to qualify for LTC Medicaid assistance. (Exhibit D-2)
- 6) On July 5, 2023, a Notice of Denial (Exhibit D-1) was issued to the Appellant citing that her request for LTC Medicaid assistance was denied because she did not receive the minimum required deficits to meet the severity criteria.

APPLICABLE POLICY

The Bureau for Medical Services (BMS) Provider Manual, §514.6.3, states:

To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, 7 days a week. BMS has designed a tool known as the Pre-Admission Screening form (PAS) (see Appendix II) 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 BMS/designee 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 assist 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 [*sic*] 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 to qualify for Long-Term Care Medicaid assistance an individual must need direct nursing care twenty-four hours a day, seven days a week and have a minimum of five deficits identified on the PAS. The Appellant appealed the Respondent's decision to deny medical eligibility based on required deficits citing that she requires assistance in five of the designated life areas. The Respondent must show by a preponderance of the evidence that the Appellant did not meet the medical criteria in at least five areas of need.

The July 4, 2023 PAS assessment documented that the Appellant failed to meet the functional criteria for deficits in any of the outlined life areas. The Appellant testified that she suffers from back issues and depression. The Appellant purported that she does not independently function in many of the assessed life areas. The Appellant contends that she meets deficits in the life areas of wheeling, transferring, bathing, medication administration, dressing, grooming and walking.

Wheeling-The Appellant testified that she can wheel herself to the bathroom within the facility. The PAS assessment rated the Appellant as a Level 2 Wheels Independently. Policy requires that a deficit is awarded in the area of wheeling when an individual is assessed at a Level 3 or higher. The Appellant's testimony indicated that she was able to wheel herself independently; therefore, a deficit in the contested area ***cannot*** be awarded.

Transferring-The Appellant testified that she is able to transfer from the bed to her wheelchair. The PAS assessment rated the Appellant as a Level 1 Independent. Policy requires that a deficit is awarded in the area of transferring when an individual is assessed at a Level 3 or higher

requiring one or two person assistance. The testimony failed to establish that the Appellant requires assistance in the contested area, because the Appellant can independently transfer from bed to wheelchair a deficit in the contested area **cannot** be awarded.

Bathing-The Appellant testified that she is unable to take a shower because she fears falling and requires a bed bath. The PAS assessment rated the Appellant as a Level 1 Self/Prompting. Policy requires that a deficit is awarded in the area of bathing when an individual is assessed at a Level 2 or higher requiring physical assistance. While the Appellant experiences difficulties in the contested area, there was no evidence to support that the Appellant requires assistance to complete bathing. Because the Appellant can independently bathe, a deficit in the contested area **cannot** be awarded.

Medication Administration-The Appellant testified that she cannot distribute her own medication. The PAS assessment revealed that the Appellant could administer her own medications. Policy requires that a deficit is awarded in the area of medication administration when an individual is not capable of administering his/her own medications. Testimony failed to establish that the Appellant requires assistance with medication administration; therefore, a deficit in the contested area **cannot** be awarded.

Dressing-The Appellant indicated that she is able to dress herself but has some difficulties due to her “frozen shoulder”. The PAS assessment rated the Appellant as a Level 1 Self/Prompting. Policy requires that a deficit is awarded in the area of dressing when an individual is assessed at a Level 2 or higher requiring physical assistance. While the Appellant experiences difficulties in the contested area, there was no evidence to support that the Appellant requires assistance in dressing. Because the Appellant can independently dress, a deficit in the contested area **cannot** be awarded.

Grooming-The Appellant indicated that she can brush her hair “the best that she can due to her frozen shoulder”. The PAS assessment rated the Appellant as a Level 1 Self/Prompting. Policy requires that a deficit is awarded in the area of grooming when an individual is assessed at a Level 2 or higher requiring physical assistance. While the Appellant experiences difficulties in the contested area, there was no evidence to support that the Appellant requires assistance in grooming. Because the Appellant can independently groom, a deficit in the contested area **cannot** be awarded.

Bowel Incontinence-The Appellant indicated that she utilizes medical supplies for bowel incontinence but offered no testimony to the frequency of the episodes of incontinence. The PAS assessment rated the Appellant as a Level 1 Continent. Policy requires that a deficit is awarded in the area of Continence when an individual is assessed at a Level 3 or higher and must be incontinent. Because there was no evidence to support the frequency of incontinence episodes, a deficit in the contested area **cannot** be awarded.

Walking-The Appellant testified that she is able to walk “some, but not far”. The PAS assessment rated the Appellant as a Level 2 Supervised/Assistive Device. Policy requires that a deficit is awarded in the area of walking when an individual is assessed a Level 3 or higher requiring one person assistance. Testimony indicated that the Appellant was able to walk

independently for a short period of time; therefore, a deficit in the contested area cannot be awarded.

Evidence failed to support that the Appellant met the severity criteria in any of the deficits outlined in the PAS assessment. Because the Appellant failed to meet the minimum requirements of 5 deficits, the Respondent's decision to deny the Appellant's request for LTC Medicaid assistance is affirmed.

CONCLUSIONS OF LAW

- 1) An individual must have a minimum of five (5) deficits identified on the PAS to be determined eligible for the Long-Term Care Medicaid program.
- 2) The Appellant was awarded zero deficits in the PAS assessment completed on July 4, 2023.
- 3) No additional deficits were awarded to the Appellant based on testimony during the hearing process.
- 4) The Appellant does not meet medical eligibility requirements for LTC Medicaid assistance.

DECISION

It is the decision of the State Hearing Officer to uphold the Respondent's decision to deny the Appellant's medical eligibility for Long-Term Care Medicaid assistance.

ENTERED this ____ day of September 2023.

**Eric L. Phillips
State Hearing Officer**