**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**

November 9, 2023

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 23-BOR-3165

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**

[redacted],

**Appellant,**

**v.** **Action Number: 23-BOR-3165**

**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 November 8, 2023.

The matter before the Hearing Officer arises from the September 21, 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 [redacted] Psychiatric Nurse Practitioner, [redacted] and [redacted], Family Nurse Practitioner, [redacted] All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits**:

- D-1 Notice of Decision dated September 21, 2023
- D-2 Bureau for Medical Services Provider Manual, Nursing Facility Services, Chapter 514 policy excerpts
- D-3 Pre-Admission Screening assessment submitted on September 21, 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 of [redacted].

2) A Pre-Admission Screening (PAS) was submitted for the Appellant on September 21, 2023, to determine the Appellant's medical eligibility for Long-Term Care Medicaid benefits (Exhibit D-3).

3) On September 21, 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 the PAS (Exhibit D-1).

4) The Notice indicates that zero (0) deficits were awarded to the Appellant on the PAS (Exhibit D-1).

5) The PAS submitted for review on September 21, 2023, was signed by [redacted] Psychiatric Nurse Practitioner, at [redacted] Exhibit D-3).

## APPLICABLE POLICY

***Bureau for Medical Services Policy Manual Chapter 514.5.1*** states that the medical determination for Nursing Facility Services is based on a physician's assessment of the medical and physical needs of the individual. The Pre-Admission Screening must bear a physician's signature dated not more than 60 days prior to admission to the nursing facility. A physician who has knowledge of the individual must certify the need for nursing facility care.

***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.

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. A physician who has knowledge of the individual must sign the PAS and certify the need for nursing home care.

The Appellant received zero deficits on a PAS submitted in September 2023, which resulted in denial of Long-Term Care Medicaid benefits.

[redacted], Psychiatric Nurse Practitioner with [redacted] testified that she completed the PAS for the Appellant. The PAS indicates that [redacted] is a medical doctor; however, [redacted] identified herself as a Psychiatric Nurse Practitioner during the hearing. Therefore, the Appellant's PAS was not certified by a physician.

As the PAS submitted on September 21, 2023, was not physician-certified, the PAS is invalid and the Respondent's decision to deny Long-Term Care Medicaid benefits cannot be affirmed.

## CONCLUSIONS OF LAW

1) Policy states that a PAS form is used for physician-certification to assess the medical needs of Long-Term Care Medicaid applicants.

2) The PAS submitted for the Appellant in September 2023 was not completed by a physician and is, therefore, invalid.

3) The Respondent's decision to deny Long-Term Care Medicaid benefits cannot be affirmed.

## DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's September 2023 denial of the Appellant's medical eligibility under the Long-Term Care Medicaid Program. The Appellant's medical eligibility must be reevaluated by the Respondent when the Appellant's representatives provide a valid, physician-certified PAS.

**ENTERED this 9th day of November 2023.**

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