State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 3, 2005

_____
by _____
_____
_____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 22, 2005. Your hearing request was based on the Department of Health and Human Resources' decision to deny medical eligibility for Nursing Facility coverage.

In arriving at a decision, the State Hearings 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.

Eligibility for the Medicaid, Long Term Care Services is based on current policy and regulations. Some of these regulations state as follows: Medicaid, Long Term Care Services are provided to eligible Medicaid individuals who reside in a nursing care or ICF/MR facility. Individuals eligible for coverage under this group must qualify medically. The medical assessment must establish the existence of a specified number and level of care needs. A determination must also be made as to whether the individual requires active treatment. These criteria only address the appropriateness of placement, and not the provision of services. (West Virginia Income Maintenance Manual § 17.1 and 17.11 & 42 CFR) .

The information which was submitted at your hearing revealed that the claimant's physical and mental condition does require a sufficient number of services and the degree of care required to qualify for Nursing Facility level of care.

It is the decision of the State Hearings Officer to **reverse** the actions of the Department to deny medical eligibility for the Medicaid, Long Term Care Program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Emily Keefer, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant,

v. **Action Number: 05-BOR-5899**

West Virginia Department of
Health and Human Resources,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 22, 2005 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on September 22, 2005 on a timely appeal, filed May 10, 2005.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Long Term Care (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Nursing Home Care is a medical service, which is covered by the State's Medicaid Program. Payment for care is made to nursing homes, which meet Title XIX standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

III. PARTICIPANTS:

Claimants' Witnesses:
_____, claimant
_____, [redacted] County
[redacted] County
_____, claimant's sister

_____, claimant's sister-in-law
_____, claimant's brother

Department's Witnesses:
Emily Keefer, Bureau of Medical Services, by speakerphone
Stacie Holstine, Bureau of Medical Services, by speakerphone

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in determining ineligibility for the Medicaid, Long Term Care (Nursing Home) Program.

V. APPLICABLE POLICY:

West Virginia Long Term Care policy §508.2
Federal Code of Regulations §42-CFR-483.130
West Virginia Income Maintenance Manual Chapter 17.11:

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:
D-1 West Virginia Long Term Care policy §508.2
D-2 Pre-Admission Screening (PAS) completed April 27, 2005

VII. FINDINGS OF FACT:

1) Mr. _____ is an 81-year-old male who is currently residing in [redacted] County, Long Term Care Facility.

2) Mr. _____ has primary diagnosis of Coronary Artery Disease, Chronic Obstructive Pulmonary Disease, and Emphysema.

3) Traci Gillispie, Registered Nurse, completed a Pre-Admission Screening (PAS) on Mr. _____ on April 27, 2005 to determine if he would meet the medical criteria for eligibility for Long Term Care Program services.

4) The evaluating nurse assigned the claimant with four (4) qualifying deficits on the PAS. These were in the functional abilities of bathing, dressing, grooming and medicating. Dr. [redacted] signed this PAS on April 27, 2005.

5) The evaluating nurse assigned a level three (3) in the area of hearing, which indicates that the claimants hearing is impaired and not correctable. She also assigned a level two

(2) in the area of mental disorder, which indicates a moderate mental condition. Under current diagnoses, the nurse checked mental retardation and wrote in (mild).

6) Ms. Holstine of Bureau of Medical Services testified that she agreed with the PAS assessment and the four (4) deficits assigned.

7) The claimant's witnesses raised issues in the areas of vacating in the event of an emergency. Ms. [redacted] testified to her belief that Mr. _____ could become agitated and frustrated in an emergency and need hands on assistance to vacate. She indicates that his COPD might cause him difficulty in an emergency vacating.

8) Ms. _____ testified that Mr. _____ has an unsteady gait and that his hearing problem could interfere with his ability to vacate without hands on assistance.

9) WV Long Term Care Policy §508.2, 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 has designated a tool known as the Pre-Admission Screening form (PAS) 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 identified on the PAS in order to qualify for the Medicaid facility benefit. These deficits may be any of the following:

Question #26

1) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
2) Bathing - Level 2 or higher (physical assistance or more)
3) Grooming - Level 2 or higher (physical assistance or more)
4) Dressing - Level 2 or higher (physical assistance or more)
5) Continence - Level 3 or higher (must be incontinent)
6) Orientation - Level 3 or higher (totally disoriented, comatose)
7) Transferring - Level 3 or higher (one person or two person assist in the home)
8) Walking - Level 3 or higher (one person or two person assist in the home)
9) 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)

Question # 24
Decubitus - Stage 3 or 4

Question #25
In the event of an emergency, the individual is mentally (c) or physically (d) unable to vacate a building.

Question #27
Individual has skilled needs in one or more of these areas – suctioning (g), tracheostomy (h), ventilator (I), parenteral fluids (k), sterile dressings (l), or irrigations (m). (The use of oxygen is not a deficit.)

Question #28
The individual is not (c) capable of administering his/her own medications.

As indicated, a total of five (5) deficits are necessary to establish the medical necessity for either nursing home or aged/disabled waiver services. In very rare instances, an individual without five (5) deficits identified on the PAS-2000 may have other health limitation that may require long-term care services. It is the responsibility of the medical professional, reviewing the assessment information, to use sound judgment in determining the need for nursing home or aged/disabled waiver services.

10) West Virginia Income Maintenance Manual Chapter 17.11:
B. ESTABLISHING MEDICAL NECESSITY, THE PAS-2000

When the PAS-2000 is completed before payment for nursing facility services can be made, medical necessity must be established. The PAS-2000 is used for this purpose. The PAS-2000 is signed by a physician and is evaluated by a medical professional of the State's contracted level of care evaluator. The PAS-2000 is valid for 60 days from the date the physician signs the form. The 60-day validity period applies, regardless of the reason for completion, i.e., new admission, transfer to a different facility.

11) Federal Code of Regulations - 42 CFR 483.130 states that any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must not be admitted.

VIII. CONCLUSIONS OF LAW:

1) Policy §508.2 stipulates that five (5) deficits are required for a determination of medical eligibility for Medicaid Facility benefits. The completed PAS assigned four (4) deficits in the areas of bathing, dressing, grooming and medicating. Witnesses and information included on the PAS supported that an additional deficit should have been assigned for needing physical assistance to vacate in the event of an emergency.

2) Policy §508.2 states that a deficit is assigned for vacating if: "In the event of an emergency, the individual is mentally or physically unable to vacate a building". Documentation included on the PAS regarding the claimant's mental impairments and his uncorrectable hearing supported the testimony given by the claimant's witnesses of his inability to vacate without hands on assistance.

IX. DECISION:

After reviewing the testimony presented during the hearing and the examination of documents and policy presented, it is the finding of this Hearing Officer that the Department should have approved the claimant's application for Medicaid, Long Term Care Program. I am ruling to **reverse** the Department's action to deny the claimant's application.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of October, 2005.

_____

Sharon K. Yoho
State Hearing Officer