State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
October 24, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

_____
_____
_____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 23, 2005. Your hearing request was based on the Department of Health and Human Resources/ West Virginia Medical Institute=s determination in finding you medically ineligible for the Medicaid, Long Term Care Program (nursing facility services).

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.

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 evaluation assessment must establish the existence of a specified number and degree of functional care needs. (West Virginia Income Maintenance Manual ' 17.1 and 17.11)

The information which was submitted at your hearing revealed that your medical condition as of the August 12, 2005 medical evaluation did not require a sufficient level of care (5 functional deficits) to medically qualify you for participation in the Medicaid, Long Term Care Program.

It is the decision of the State Hearing Officer to **uphold** the Agency's determination of August 18, 2005 finding you medically ineligible for the Medicaid-Long Term Care Program.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Bureau for Medical Services, Emily Keefer
[redacted]VAMC, [redacted] LSW

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,

Claimant,

vs. **Action Number 05- BOR- 6530**

West Virginia Department of Health & Human Resources,

Respondent.

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 24, 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 originally convened on September 23, 2005 on a timely appeal filed August 24, 2005. It should be noted here that the claimant has been found not medically eligible for the Medicaid, Long Term Care Program.

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: (all participating by phone)

_____, claimant
[redacted] LSW, VAMC
Emily Keefer, BMS/ Program Manager- LTC
Oretta Keeney, West Virginia Medical Institute
Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the claimant is medically eligible for the Medicaid, Long Term Care Program?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 17.1 and 17.11.
Medicaid Manual Chapter 500, Volume 15 § 508.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E -1- Medicaid Policy 508- 508.3
E -2- PAS-2000, Medical Evaluation, and medical documentation, 8/12/05
E -3- Notification (of denial) August 18, 2005

VII. FINDINGS OF FACT:

1) A PAS-2000, medical evaluation dated August 12, 2005 (E-2) was evaluated by Dept of Health & Human Resources per West Virginia Medical Institute August 18, 2005. WVMI determined the claimant medically ineligible for the Medicaid, Long Term Care Program and claimant was notified August 18 (E-3).

2) The claimant's hearing request was received by the Bureau for Medical services August 24, 2005 and a hearing was convened by phone September 23, 2005.

3) During the hearing, Exhibits as noted in Section VI were presented.

4) Testimony was heard from the individuals listed in section III above.

5) The agency (BMS and WVMI) acknowledged qualifying functional deficits in eating and medication administration.

6) No convincing evidence or testimony was submitted which established any additional qualifying deficits other than those noted by the agency.

7) Medicaid Manual Chapter 500, Volume 15 § 508.2 states in part: 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 nursing facility benefit. These deficits may be any of the following:

- Stage 3 or 4 pressure ulcer
- In the event of an emergency, the individual is mentally or physically unable to vacate a building
- The individual needs hands on assistance with eating, bathing, grooming, dressing, transfer, and walking.
- The individual is incontinent of bowel or bladder more than three (3) times a week.
- The individual is totally disoriented to time and place or is comatose
- The individual cannot navigate a wheel chair in the home and must not be able to walk in the home without physical assistance.
- The individual has skilled nursing care needs in one or more of these areas: suctioning, tracheotomy, ventilator, parenteral fluids, sterile dressings or irrigations.
- The individual is not capable either mentally or physically of administrating his/her own medications.

The assessment tool designated by the Bureau for Medical Services must be completed and signed and dated by a physician. It is then forwarded to the Bureau or its designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility no matter what the payment source for services.

VIII. CONCLUSIONS OF LAW:

1) Policy reveals that 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. A tool known as the Pre-Admission Screening form (PAS) is utilized for physician certification of the medical needs of individuals applying for the Medicaid benefit. After submission of the PAS, it is then forwarded to the Bureau or its designee (WVMI) for medical necessity review. Evidence reveals that the required PAS was completed August 12, 2005 and evaluated by WVMI August 18, 2005 at which time the claimant was determined medically ineligible.

2) Policy holds that to medically qualify for for the nursing home Medicaid benefit, an individual must have a minimum of qualifying five deficits on the PAS. These deficits are derived from a combination of assessment elements on the medical evaluation- Pressure ulcer - Stage 3 or 4; in the event of an emergency, the individual ability to vacate a building; functional abilities of individual in the home (eating, bathing, grooming, dressing, continence, orientation, transferring, walking, wheeling); skilled needs; and the ability to self-administer medication. Evidence revealed qualifying deficits only in 2 areas of functional limitation while a minimum of 5 are required to medically qualify for Medicaid participation.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the agency's August 18, 2005 determination concerning the claimant=s medical eligibility for Medicaid LTC Services. Evidence, establishes only 2 fully qualifying deficits- medication administration and eating - program eligibility requires 5.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 24th day of October 2005,

_____

RON ANGLIN
State Hearing Examiner

THE CLAIMANT'S RECOURSE TO HEARING DECISION

A. CIRCUIT COURT

An adverse decision of a State Hearing Officer is subject to judicial review through a Writ of Certiorari (West Virginia Code 53-3-1 et seq.) filed in the Circuit Court of Kanawha County within four (4) months from the date of the hearing decision.

The court may determine anew the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision may be appealed to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATES DEPARTMENT OF AGRICULTURE

If the hearing decision involves food stamps and you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.