



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
227 Third St.  
Elkins, WV 26241

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

October 25, 2005

\_\_\_\_\_  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 find you medically ineligible for the Medicaid Long-Term Care Program.

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 Sections 17.1 and 17.11)

Information submitted at the hearing revealed that your condition as of the August 4, 2005 medical evaluation did not require a sufficient level of care (five 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 that you are medically ineligible for the Medicaid Long-Term Care Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
Emily Keefer, Bureau for Medical Services, DHHR

# WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

\_\_\_\_\_,

**Claimant,**

**vs.**

**Action Number 05- BOR- 6548**

**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 25, 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 22, 2005 on a timely appeal filed August 30, 2005. It should be noted here that the Claimant has been found medically ineligible 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:

\_\_\_\_\_, Claimant

\_\_\_\_\_, sister of Claimant

\_\_\_\_\_, brother of Claimant

\_\_\_\_\_, friend of Claimant

\_\_\_\_\_ Regional Ombudsman, \_\_\_\_\_ County Nursing Homes

\_\_\_\_\_ Social Worker \_\_\_\_\_ Center (participating telephonically)

Emily Keefer, Program Manager, Long-Term Care Program, BMS, DHHR (participating telephonically)

Oretta Keeney, RN, West Virginia Medical Institute (participating telephonically)

Presiding at the hearing was Pamela Hinzman, 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 Sections 17.1 and 17.11.  
West Virginia Medicaid Manual Section 508.2

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits**

- D-1 West Virginia Medicaid Manual Section 508.2
- D-2 PAS form completed August 4, 2005

##### **Claimant's Exhibits**

- C-1 Letter from Dr. [REDACTED] dated July 25, 2005
- C-2 Neuropsychological Evaluation dated August 30, 2005
- C-3 Letter from \_\_\_\_\_

#### **VII. FINDINGS OF FACT:**

- 1) A PAS-2000 medical evaluation (D-2) was completed for the Claimant on August 4, 2005 by West Virginia Medical Institute (WVMI). The Claimant had been residing at [REDACTED] Center and WVMI was completing an initial assessment for the Medicaid Long-Term Care Program. It was determined that the Claimant is medically ineligible for the Medicaid Long-Term Care Program.
- 2) Ms. \_\_\_\_\_ testified that zero qualifying functional deficits were found and the Claimant was notified of the denial of approval of admission on August 9, 2005.
- 3) Witnesses for the Claimant discussed his dementia diagnosis and need for supervision, however, no convincing evidence or testimony was submitted to establish any additional qualifying deficits.
- 4) West Virginia Medicaid Manual Section 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 wheelchair 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 administering 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) To qualify medically for the Medicaid Long-Term Care Program, policy specifies that an individual must require 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. The PAS is completed and forwarded to the Bureau of Medical Services or its designee (WVMI) for medical necessity review. Evidence reveals that a PAS was completed on August 4, 2005 and it was determined that the Claimant is medically ineligible for Medicaid Long-Term Care Services.
- 2) Policy holds that to medically qualify for the nursing home Medicaid benefit, an individual must have a minimum of five (5) qualifying deficits on the PAS. These deficits are derived from a combination of assessment elements on the medical evaluation. The PAS revealed that the Claimant has zero qualifying deficits in areas of functional limitation.
- 3) While testimony and evidence revealed that the Claimant has mental limitations stemming from dementia and would have difficulty functioning without prompting or supervision, no program qualifying deficits could be established based on information submitted during the hearing.

### **IX. DECISION:**

After reviewing information presented during the hearing and the applicable policy and regulations, it is the ruling of the State Hearing Officer to **uphold** the Agency's decision to deny medical eligibility for the Medicaid Long-Term Care Program.

**X. RIGHT OF APPEAL**

See Attachment.

**XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 25<sup>th</sup> day of October 2005,**

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**Pamela L. Hinzman**  
**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.