



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
416 Adams St.
Fairmont, WV 26554**

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

January 11, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3475

Dear Ms. [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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Teresa McDonough, BMS

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3475

**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 ██████████. 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 January 6, 2016, on an appeal filed November 13, 2015.

The matter before the Hearing Officer arises from the November 2, 2015 decision by the Respondent to propose termination of Appellant's Medicaid coverage provided through the Traumatic Brain Injury (TBI) Waiver Program.

At the hearing, the Respondent appeared by Teresa McDonough, Bureau for Medical Services, WVDHHR. Appearing as witnesses for the Respondent were ██████████ and ██████████, APS Healthcare. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-2 West Virginia Bureau for Medical Services Provider Manual Chapter 512, Traumatic Brain Injury Waiver (TBIW) §§512.6 & 512.9.1
- D-3 West Virginia Bureau for Medical Services Provider Manual Chapter 512, Traumatic Brain Injury Waiver (TBIW) §512.9.3.1
- D-4 Potential Denial Letter dated 10/6/15
- D-8 Notice of Denial dated 11/2/15
- D-11 West Virginia TBI Waiver Program Data Modification Request (received 10/13/15)

*Exhibits D-1, D-5, D-6, D-7, D-9 and D-10 were not submitted into evidence.

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 was medically reevaluated for continued Medicaid benefits through the Traumatic Brain Injury (TBI) Waiver Program and was notified on October 6, 2015 via a Potential Denial Letter (D-4) that medical eligibility could not be established. Exhibit D-4 indicates that a minimum of five (5) deficits were not identified on the Pre-Admission Screening (PAS) evaluation and that a score of seven (7) or lower was not obtained on the Ranchos Los Amigos Scale of Cognitive Functioning. It should be noted that two (2) functional deficits were identified (grooming and dressing) and cognitive functioning was assessed at level eight (8). Exhibit D-4 further notified the Appellant that she had thirty (30) days to submit additional clinical information for consideration of her medical eligibility – must be received on or before November 6, 2015.
- 2) Appellant submitted a Medical Eligibility Evaluation Data Modification Request (D-11) timely and the information contained therein was reviewed by Respondent. Respondent stipulated that two additional functional deficits (bathing and medication administration) were identified; however, the cognitive functioning assessment remained unchanged.
- 3) On November 2, 2015, Appellant was notified (D-8) that medical eligibility for the TBI Waiver Program was not established and that the decision resulted in termination of Waiver services. As noted by Respondent, Exhibit D-8 reveals that the medical assessment, with additional clinical documentation, identified only four (4) functional deficits on the PAS and the ineligible cognitive assessment score of 8 remained unchanged.
- 4) Appellant filed her appeal timely and benefits have continued pending the hearing decision.
- 5) As a matter of record, Appellant agreed with the medical finding reviewed by Respondent.

APPLICABLE POLICY

West Virginia Bureau for Medical Services Provider Manual Chapter 512, Traumatic Brain Injury Waiver (TBIW) §512.6

Applicants for the TBIW Program must meet all of the following criteria to be eligible for the program:

- A. Be three years of age or older.
- B. Be a permanent resident of West Virginia.
- C. Have a traumatic brain injury defined as a non-degenerative, non-congenital insult to the brain caused by an external physical force resulting in total or partial functional disability and/or psychosocial impairment or an injury caused by anoxia due to near drowning.
- D. Be approved as medically eligible for nursing facility level of care. (Emphasis added)
- E. Score at a Level VII or below on the Rancho Los Amigos Levels of Cognitive Functioning Scale. (Emphasis added)
- F. Ages three to 17 years of age must score at a Level II or higher on the Rancho Los Amigos Pediatric Level of Consciousness Scale.
- G. Be inpatient in a licensed nursing facility, an inpatient hospital, a licensed rehabilitation facility to treat TBI, or living in a community setting at the time of application.
- H. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the Social Security Administration (SSA), if an active SSI (Supplemental Security Income) recipient.
- I. Choose to participate in the TBIW Program as an alternative to nursing facility care.

The applicant must first meet the financial eligibility requirements before a determination of the applicant's medical eligibility will be made. A funded slot must be available for him/her to participate in the program. If no funded slots are available, applicants determined financially and medically eligible for the Program will be placed on a waiting list known as the Managed Enrollment List (MEL). As funded slots become available, applicants on the Managed Enrollment List will be notified and provided detailed instructions on continuing the enrollment process. Eligible applicants are assigned an available funded slot on a first on first off basis, i.e. the first person on the MEL is the first person off the MEL.

West Virginia Bureau for Medical Services Provider Manual Chapter 512, Medical Criteria §512.9.1 provides that a person must have five deficits as described on the Pre-Admission Screening Form (PAS) to qualify for nursing facility level of care. These deficits are derived from a combination of the following assessment elements on the PAS.

- #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) Independently and b) With Supervision 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)
Dressing ---- Level 2 or higher (physical assistance or more)
Grooming--- Level 2 or higher (physical assistance or more)
Continence (bowel, bladder) -- Level 3 or higher; must be incontinent
Orientation-- Level 3 or higher (totally disoriented, comatose)
Transfer ----- Level 3 or higher (one-person or two-person assistance in the home)
Walking ----- Level 3 or higher (one-person assistance 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)
Vision-----Level 3 or higher (Impaired/Not Correctable)
Hearing-----Level 3 or higher (Impaired/Not Correctable)
Communication- Level 3 or higher (Understandable with aids)

- #27 The person has skilled needs in one or more of these areas:
Physical Therapy, Speech Therapy, Occupational Therapy, suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations.
- #28 The person is not capable of administering his/her own medications or needs prompting and supervision
- #34 Clinical and Psychological data-behaviors: disoriented, seriously impaired judgment, cannot communicate basic needs, physically dangerous to self and others if unsupervised.

Applicants and people re-determining medical eligibility must also score at the levels on the Rancho Los Amigos Levels of Cognitive Functioning Scale or the Rancho Los Amigos Pediatric Level of Consciousness Scale.

West Virginia Bureau for Medical Services Provider Manual Chapter 512, Medical Criteria §512.9.2.1.B – Results of initial Medical Evaluation:

If it is determined that the applicant does not meet medical eligibility, the applicant and/or the legal representative (if applicable), referent and Case Management agency will be notified by a Potential Denial-Additional Information Needed letter. This letter will advise the applicant of the reason for the potential denial, listing the areas in which deficiencies were found. A copy of the PAS, the Rancho Los Amigos Levels of Cognitive Functioning Scale or the Rancho Los Amigos Pediatric Level of Consciousness Scale and the applicable TBIW policy Chapter section(s) will

also be included with the Potential Denial-Additional Information Needed letter. The applicant will be given thirty calendar days to submit supplemental medical information to the UMC. Information submitted after the thirty calendar day period will not be considered in the eligibility determination. However, it may be used during a pre-hearing conference or Medicaid Fair Hearing. Please note, a Potential Denial-Additional Information Needed letter is not a denial of service and a request for Fair Hearing should not be made at this time.

If the review of the supplemental information by the UMC determines the applicant is not medically eligible, the applicant and/or the legal representative (if applicable), Case Management Agency and the referent will be notified by a Final Denial letter. The Final Denial letter will provide the reason for the adverse decision. It will also include the applicable TBIW policy Chapter section(s), a copy of the PAS, the Rancho Los Amigos Levels of Cognitive Functioning Scale or the Rancho Los Amigos Pediatric Level of Consciousness Scale, supplemental medical information documentation (if it has been supplied), notice of free legal services, and a Request for Hearing Form to be completed if the applicant wishes to contest the decision.

DISCUSSION

Policy provides that an eligible individual must have five (5) deficits, as described on the Pre-Admission Screening Form (PAS), to qualify for nursing facility level of care, and score at a Level 7 or below on the Rancho Los Amigos Levels of Cognitive Functioning Scale. Uncontested evidence submitted at the hearing confirms that the Appellant's medical assessment completed for continued eligibility identified only four (4) functional deficits on the PAS, and a score of eight (8) on the Rancho Los Amigos Levels of Cognitive Functioning Scale. While it is clear that the Appellant may still require some assistance, Respondent was correct in its decision to deny TBI Waiver medical eligibility and propose termination.

CONCLUSIONS OF LAW

The evidence confirms that that the Appellant no longer meets the medical eligibility requirements for continued Medicaid benefits through the TBI Waiver Program.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's decision to propose termination of Appellant's Medicaid benefits provided through the TBI Waiver Program.

ENTERED this _____ Day of January 2016.

**Thomas E. Arnett
State Hearing Officer**