June 19, 2025

[redacted]

RE: [redacted] v. WVDoHS-BUREAU FOR MEDICAL SERVICES
ACTION NO.: 25-BOR-2011

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 Human Services. These same laws and regulations are used in all cases to ensure 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: BMS

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 25-BOR-2011**

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES
BUREAU FOR MEDICAL SERVICES,

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on June 11, 2025, on an appeal dated May 15, 2025.

The matter before the Hearing Officer arises from the April 28, 2025 decision by the Respondent to deny Long-Term Care Medicaid admission.

At the hearing, the Respondent appeared by Terry McGee II, Program Manager. Appearing as a witness for the Respondent was Melissa Grega, Nurse Reviewer, Acentra. The Appellant appeared by [redacted] Long-Term Care Regional Ombudsman-Legal Aid of West Virginia. Appearing as witnesses was [redacted] All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Denial for Long-Term Care (Nursing Facility) dated April 28, 2025
D-2 Bureau of Medical Services Policy 514-Nursing Facility Services
D-3 Pre-Admission Screening dated April 24, 2025
D-4 [redacted]-Medication Review Report

Appellant's Exhibits:

A-1 Resident Assessment and Care Screening dated April 29, 2025

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 at the [redacted].

2) The Appellant's medical eligibility was assessed for Long-Term Care (LTC) Medicaid assistance.

3) On April 24, 2025, a Pre-Admission Screening (PAS), a requirement to determine medical eligibility for LTC Medicaid assistance, was conducted by [redacted]

4) The PAS documented functional deficits in medication administration and bathing.

5) On April 28, 2025, a Notice of Denial (Exhibit D-1) was issued to the Appellant citing that her request for LTC Medicaid assistance was denied because she did not receive the minimum required deficits to meet the severity criteria.

6) The Appellant has a primary diagnosis of dementia.

APPLICABLE POLICY

The Bureau for Medical Services (BMS) Provider Manual, §514.6.3, states:

> To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, 7 days a week. BMS has designed a tool known as the Pre-Admission Screening form (PAS) (see Appendix II) 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 deficits identified on the PAS. These deficits will be determined based on the review by BMS/designee in order to qualify for the Medicaid 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 assist 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 [*sic*] 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

Medical eligibility for Long-Term Care Medicaid assistance is established when an individual requires direct nursing care twenty-four hours a day, seven days a week and has a minimum of five deficits identified on the PAS. The Appellant appealed the Respondent's decision to deny medical eligibility based on her failure to demonstrate the required deficits to meet the severity criteria. The Respondent must show by a preponderance of the evidence that the Appellant did not meet the medical criteria in at least five areas of need.

On April 24, 2025, a PAS assessment was completed which documented that the Appellant met the criteria for a functional deficit in the areas of bathing and medication administration. The information submitted in the PAS assessment failed to document at least five areas of care needs that met the severity criteria. Because the Appellant failed to meet the severity criteria, the Respondent denied the Appellant's medical eligibility for LTC, effective April 28, 2025.

The Appellant's representatives contend that additional deficits should be awarded in the areas of vacating during an emergency, transferring and walking.

On April 29, 2025, the LTC facility completed a Resident Care and Assessment Screening (Exhibit A-1) which documents that the Appellant requires supervision or touching assistance in the area of mobility. This assessment documents that the Appellant requires supervision or touching assistance to transfer from the toilet or bathtub and walk between 10 feet to 150 feet. Because the Appellant requires such assistance in these areas, the Appellant's representatives contend that additional deficits should be awarded in the contested areas.

Based on an evidentiary review, the Appellant presented a primary diagnosis of dementia upon her

admission to the LTC facility. Based on this diagnosis, coupled with her inability to transfer or ambulate without supervision or physical assistance, the Appellant is physically and mentally unable to vacate during an emergency. Therefore, an additional deficit in the contested area should be awarded.

Additionally, evidence revealed that the Appellant was unable to ambulate or transfer without supervision or physical assistance. Because the Appellant requires physical assistance in each of these areas an additional deficit should be awarded in the areas of walking and transferring.

Whereas five deficits were identified for the Appellant, the Respondent's decision to deny medical eligibility for Long-Term Care Medicaid cannot be affirmed.

CONCLUSIONS OF LAW

1) An individual must have a minimum of five (5) deficits identified on the PAS to be determined medically eligible for the Long-Term Care Medicaid program.

2) The Appellant was awarded two (2) deficits on the PAS assessment completed April 24, 2025.

3) Based on the evidence, three additional deficits were awarded in the area of vacating, transferring and walking.

4) The Appellant meets the medical eligibility requirements for Long-Term Care Medicaid assistance.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's medical eligibility for Long-Term Care Medicaid assistance.

ENTERED this _____ day of June 2025.

_____

Eric L. Phillips
State Hearing Officer