May 27, 2026

[redacted]

RE: [redacted] v. WVDoHS
ACTION NOS.: 26-BOR-1774 & 26-BOR-1814

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
Certified State Hearing Officer
Member, State Board of Review

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

cc: BMS
[redacted] Appellant's Representative

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Numbers: 26-BOR-1774**
26-BOR-1814

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 May 21, 2026, on appeals filed with the Board of Review on April 15, 2026 and April 22, 2026.

The matter before the Hearing Officer arises from the March 18, 2026 and April 16, 2026 decisions by the Respondent to deny the Appellant's application for Long-Term Care (LTC) Medicaid assistance.

At the hearing, the Respondent appeared by Terry McGee, Program Manager-Long Term Care Unit, Bureau of Medical Services. Appearing as a witness for the Respondent was Melissa Grega, RN, Nurse Reviewer-Acentra Health. The Appellant appeared with their representative [redacted]. Appearing as witnesses for the Appellant were [redacted], Administrator [redacted] Social Worker [redacted] Appellant's son, [redacted] Appellant's Daughter-In-Law. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Decision dated March 18, 2026
D-2 Bureau of Medical Services Policy 514-Nursing Facility Services
D-3 Pre-Admission Screening dated March 17, 2026
D-4 Medication List-[redacted]
D-5 Pre-Admission Screening dated April 15, 2026

D-6 Notice of Decision dated April 16, 2026

Appellant's Exhibits:

None

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 a resident of the [redacted] nursing facility.

2) On March 17, 2026, the Pre-Admission Screening (PAS), a requirement to determine medical eligibility for LTC Medicaid assistance, was conducted by [redacted] (Exhibit D-3)

3) The PAS documented functional deficits in the areas of eating and bathing.

4) On March 18, 2026, a Notice of Decision (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.

5) On April 15, 2026, the Appellant and her representative appealed the denial with the Board of Review.

6) On April 15, 2026, an additional PAS was conducted by [redacted] to reassess medical eligibility for LTC Medicaid assistance. (Exhibit D-5)

7) The additional PAS documented no functional deficits in any of the life areas.

8) On April 16, 2026, a Notice of Decision (Exhibit D-6) 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.

9) On April 22, 2026, the Appellant and her representative appealed the denial with the Board of Review.

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 number of deficits to meet the severity criteria. The Respondent must show by a preponderance of evidence that the Appellant did not meet the medical criteria in at least five areas of need.

On March 17, 2026, a PAS assessment was completed which documented that the Appellant met the criteria for functional deficits in the areas of eating and bathing. 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 March 18, 2026.
On April 15, 2026, an additional PAS assessment was completed which yielded no functional deficits to meet the severity criteria. The information submitted in the additional PAS failed to document at lease 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 16, 2026.

The Appellant and her representatives appeal both denials. [redacted] the Appellant's representative contends that his mother suffers from cognitive issues which require "substantial maximum assistance." [redacted] contends that deficits should be awarded in the areas of eating, bathing, medication administration, grooming and vacating during an emergency.

Eating-Testimony indicated that the Appellant requires preparation for meals. At the initial PAS assessment, the Appellant was rated as a Level 2, requiring physical assistance. At the secondary PAS assessment, the Appellant was rated as Level 1, self/prompting. Policy is specific that meal preparation is not considered when awarding a deficit in the contested area and that the individual must require physical assistance to gain nourishment. The Appellant was previously awarded a deficit in eating at the March 2026 assessment; therefore, it is reasonable to assume that these deficiencies continued a month later. Based on information provided in the PAS assessment, a deficit in the contested area should be awarded.

Bathing-Testimony indicated that the Appellant requires "substantial maximum assistance" and requires assistance in the contested area due to falling. Testimony indicated that the Appellant has fallen multiple times, most recently in October 2025 and January 2026. At the initial PAS assessment, the Appellant was rated as a Level 2, requiring physical assistance. At the secondary PAS assessment, the Appellant was rated as Level 1, self/prompting. In order for a deficit to be awarded in the contested area, an individual must require physical assistance to participate in the life areas. The Appellant was previously awarded a deficit in bathing at the March 2026 assessment; therefore, it is reasonable to assume that these deficiencies continued a month later. Based on information provided in the PAS assessments, a deficit in the contested areas should be awarded.

Medication Administration-Testimony indicated that the Appellant requires assistance in medication administration due to confusion and cognitive issues. Testimony indicated that the Appellant requires assistance to avoid taking the wrong medications and needs to ensure the proper dosage to avoid grand mal seizures. In order for a deficit to be awarded in the contested area, an individual must be incapable of administering their own medications. Based on testimony provided during the hearing process and the Appellant's diagnosis of Alzheimer's Disease documented in the PAS, it is reasonable to assume the Appellant requires assistance in administering her own medications. Therefore, a deficit in the contested area can be awarded.

Grooming-Testimony indicated that the Appellant requires assistance with hygiene. Testimony indicated that the Appellant has her hair styled weekly at the facility beauty salon. In order for a deficit to be awarded in the contested area, an individual must require physical assistance to perform the activity in the contested area. Evidence presented during the hearing process failed to

establish that the Appellant requires physical assistance in the contested area; therefore, an additional deficit in grooming cannot be awarded.

Vacating during an emergency-Testimony indicated that the Appellant's cognitive issues would attribute to her inability to vacate during an emergency. Testimony indicated that the Appellant requires the use of a walker on a daily basis. Provided testimony did not reveal impairing orientation deficits or need for physical assistance to accomplish walking or transferring. Evidence presented during the hearing process failed to establish that the Appellant requires physical assistance to vacate; therefore, an additional deficit cannot be awarded.

Because the Appellant failed to meet the medical eligibility criteria of at least five required deficits in the area of care needs, she does not meet the medical eligibility criteria for Long-Term Care Medicaid assistance. The Respondent's decision to deny LTC admission is 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 deficits on the PAS assessment completed March 17, 2026.

3) Based on evidence, one additional deficit may be awarded in the area of medication administration.

4) The Appellant does not meet the medical eligibility requirements for Long-Term Care Medicaid assistance.

DECISION

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

ENTERED this _____ day of May 2026 .

_____

Eric L. Phillips
Certified State Hearing Officer