March 28, 2024

[redacted]

RE: [redacted] v. WVDoHS
ACTION NO.: 24-BOR-1219

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 Health and 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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Decision Recourse
Form IG-BR-29
cc: Terry McGee, II, Bureau for Medical Services
Kesha Walton, Bureau for Medical Services

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 24-BOR-1219**

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 Board of Review's Common Chapters Manual. This fair hearing was convened on March 7, 2024.

The matter before the Hearing Officer arises from the Respondent's December 19, 2023 decision to deny the Appellant's eligibility for Medicaid Long-Term Care admission.

At the hearing, the Respondent appeared by Terry McGee, II, Bureau for Medical Services. Appearing as a witness on behalf of the Respondent was Melissa Grega, RN, Acentra. Representing the Appellant during the hearing was [redacted] Appearing as witnesses for the Appellant were [redacted] All witnesses were placed under oath and the following exhibits were entered in the record.

Department's Exhibits:
D-1 Notice, dated December 19, 2023
D-2 [redacted] Center Medication Review Report
D-3 Pre-Admission Screening (PAS), completed December 19, 2023

Appellant's Exhibits:
A-1 Facility Note Screenshots, dated August 1, 2023 through February 14, 2024
A-2 [redacted] Assessment Note, signed by the provider on February 28, 2024
A-3 PAS tool information sheet
A-4 Text screenshots and photos

A-5 Incontinence supplies photos, undated
A-6 Clinical note, dated February 22, 2024

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 following Findings of Fact are set forth.

FINDINGS OF FACT

1) On August 15, 2023, the Appellant was certified to continue receiving the long-term nursing center level of care (Exhibit D-2).

2) On December 19, 2023, the Respondent issued a notice advising the Appellant that her Medicaid Long-Term Care admission had been denied because the Pre-Admission Screening form failed to identify severe deficits in at least five (5) area of care needs (Exhibit D-1).

3) The PAS revealed the presence of deficits in *medication administration, bathing, orientation,* and *requires emergency assistance/vacating* (Exhibit D-1).

4) On December 19, 2023, the [redacted] (hereafter, Facility) by [redacted] completed a PAS with the Appellant (Exhibit D-3).

5) At the time of the PAS, the Appellant had diagnoses including Type 2 Diabetes Mellitus without Complications, Other Specified Arthritis, Hyperlipidemia, Essential Hypertension, Altered Mental Status, Long Term Use of Insulin, and Unspecified Dementia (Exhibit D-2).

6) [redacted] graded the Appellant's Significant Arthritis as *severe*. He graded Pain, Diabetes, Contractures, and Mental Disorder(s) as *moderate* (Exhibit D-3).

7) At the time of the PAS, the Appellant did not have a decubitus (Exhibit D-3).

8) At the time of the PAS, the Appellant did not require physical assistance for *eating* (Exhibits D-2 and D-3).

9) The PAS #26 indicated that the Appellant was Level 1: capable of completing *dressing* and *grooming* independently or with prompting (Exhibit D-3).

10) Under item #26 *Describe functional ability in the home* on the PAS, [redacted] noted the Appellant "Required assistance with ADLs" (Exhibit D-3).

11) At the time of the PAS, the Appellant had an active order for Podiatry consult "as needed" (Exhibit D-2).

12) At the time of the PAS, the Appellant had an active order for "Dry Skin to BL Feet; apply bag balm to dry skin on her bl feet, then re-apply socks, after resident has retired for the evening; Q night shift-careful not to apply between toes every night shift," (Exhibit D-2).

13) At the time of the PAS, the Appellant did not have any active physician orders for bowel or bladder incontinence (Exhibit D-2).

14) At the time of the PAS, the Appellant was Level 1: independent *transferring* and *walking* (Exhibit D-3).

15) At the time of the PAS, the Appellant was prescribed a regular diet (Exhibit D-2).

16) At the time of the PAS, the Appellant did not require skilled needs in suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations (Exhibits D-2 and D-3).

17) Beginning on June 16, 2023, the Appellant had a physician order for "Transfers/ambulates independently" (Exhibit D-2).

18) [redacted] recommended nursing facility placement only for the Appellant and indicated "No" to whether the Appellant would eventually be able to return home (Exhibit D-3).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 514.5.1 *Application Procedures* provides in relevant sections: The medical eligibility determination is based on a physician's assessment of the medical and physical needs of the individual. The Pre-Admission Screening (PAS) assessment must have a physician's signature dated not more than 60 days before admission to the nursing facility. A physician who has knowledge of the individual must certify the need for nursing facility care.

BMS Manual § 514.5.2 *Pre-Admission Screening (PAS)* provides in relevant sections: The PAS (level 1) identifies the medical need for nursing facility services based on evaluation of identified deficits and screens for the possible presence of a major mental illness, mental retardation, and/or developmental disability.

Bureau for Medical Services (BMS) Manual § 514.5.3 *Medical Eligibility Regarding the PAS* provides in relevant sections: To medically qualify for the nursing facility Medicaid benefit, an individual must need direct nursing care 24 hours a day, seven days a week. The BMS has designated a tool, known as the PAS form, to be utilized for physician certification of the medical needs of individuals applying for Medicaid benefits. The PAS must be completed, signed, and dated by a physician.

To qualify for nursing facility Medicaid benefit, an individual must have a minimum of five deficits identified on the PAS. These deficits may be any of the following (numbers represent questions on the PAS form):

- #24: Decubitus – Stage 3 or 4
- #25: In the event of an emergency, the individual is mentally or physically unable to vacate a building. Independently and with supervision are not considered deficits.
- #26: Functional abilities of the individual in the home.
    - Eating: Level 2 or higher (physical assistance to get nourishment…)
    - 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 person assist in the home)
    - Walking: Level 3 or higher (one person assistance in the home)
    - Wheeling: Level 3 or higher
- #27: Individual has skilled needs in one of these areas: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations
- #28: Individual is not capable of administering his/her own medications

BMS Manual Chapter 514, Appendix B *Pre-Admission Screening* provides in relevant sections: For *eating*, *bathing*, and *grooming*, Level 2 requires physical assistance. For *continence*: occasional incontinence is Level 2 and incontinence is Level 3. For *orientation*, Level 3 is totally disoriented. For *transfer* and *walking*, Level 3 requires one-person assistance. For *wheeling*, Level 3 requires situational assistance.

DISCUSSION

The Appellant was previously approved, in June and August 2023, for long-term nursing home admission. In December 2023, the Respondent denied the Appellant's medical eligibility for Medicaid Long-Term Care (LTC) benefits because the PAS did not identify the presence of severe deficits in five functioning areas. The PAS revealed the presence of deficits in four (4) areas: *medication administration*, *bathing*, *orientation*, and *requires emergency assistance/vacating*. During the hearing, the Appellant's representative argued that the Appellant should have received deficits for *dressing*, *grooming*, and *continence*.

The Board of Review cannot judge the policy and can only determine if the Respondent followed the policy when deciding the Appellant's Medicaid LTC benefit eligibility. Further, the Board of Review cannot make clinical determinations regarding the Appellant's functional ability and can only decide if the Respondent correctly concluded the Appellant's eligibility based on the submitted documentation. The Appellant's representative testified that the Appellant's functioning has further declined since the December 2023 PAS was administered. Testimony and records regarding the Appellant's functioning after the PAS and subsequent Medicaid LTC eligibility denial could not be considered as the information was not relevant to the Appellant's functioning at the time of the PAS.

The evidence revealed that on December 19, 2023, the Appellant's physician, [redacted], completed the PAS with the Appellant. The evidence did not indicate the Appellant had a *decubitus* at the time of the PAS. To receive a deficit in *eating*, the Appellant must require physical assistance

to get nourishment. No testimony or records were submitted to indicate the Appellant required physical assistance *eating*.

During the hearing, the Appellant's representative argued the Appellant required physical assistance *dressing* and *grooming* at the time of her June 13, 2024 PAS and that her functioning abilities have not improved since that time. To receive a deficit for *dressing* and *grooming*, the Appellant must require physical assistance to complete tasks in these areas. Item #26 on the PAS revealed that the Appellant was capable of independently completing *dressing* and *grooming* tasks with prompting, however, #26 also reflected [redacted] note that the Appellant required assistance with Activities of Daily Living (ADLs). On the PAS, [redacted] indicated that the Appellant's Significant Arthritis is *severe*. The active physician orders at the time of the PAS included: nightly foot care and sock application, and podiatry consultation as needed for foot care. The preponderance of evidence corroborates the Appellant's representative's argument that the Appellant required physical assistance *dressing* and *grooming* at the time of the December 19, 2023 PAS. The Appellant should have received deficits for *dressing* and *grooming* at the time of the PAS.

During the hearing, the Appellant submitted photos and testimony that the Appellant's family had independently purchased incontinence supplies the Appellant was using at the time of the PAS. The Appellant's representative testified that the Facility may not have been aware the Appellant was using incontinence supplies at that time. To receive a deficit for *continence*, the Appellant had to be assessed as Level 3 — totally incontinent of bladder or bowel — at the time of the PAS. Although testimony was provided indicating that the Appellant had been incontinent of bladder at the time of the PAS, the physician's PAS and Facility orders do not corroborate the presence of total bladder or bowel incontinence at the time of the PAS; therefore, a deficit cannot be awarded for *continence*.

While the physician's orders reflected a monitoring order for "confusion, lightheadedness, slurred speech, lack of concentration, irritability, staggering gait," supervision and monitoring do not constitute physical assistance *transferring, walking,* or *wheeling* or corroborate the presence of severe deficits in any additional areas.

To be awarded a deficit in *skilled needs*, the Appellant had to require skilled needs in one or more areas, including suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations. No evidence was entered to indicate that the Appellant had any of these skilled needs.

CONCLUSIONS OF LAW

1) To be eligible for Medicaid LTC admission, the Appellant had to demonstrate five (5) functional deficits at the time of the PAS.

2) The preponderance of evidence revealed that at the time of the December 2023 PAS, the Appellant had deficits in *medication administration, bathing, grooming, dressing, orientation,* and *requires emergency assistance/vacating.*

3) The Respondent incorrectly denied the Appellant medical eligibility for Medicaid LTC admission.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's December 19, 2024 decision to deny the Appellant eligibility for Medicaid Long-Term Care admission. It is hereby **ORDERED** the Appellant's Medicaid Long-Term Care admission eligibility be reinstated retroactively to the date of denial.

Entered this 28th day of March 2024.

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Tara B. Thompson, MLS
State Hearing Officer