April 17, 2024

[redacted]

RE: [redacted] v. WVDoHS
ACTION NO.: 24-BOR-1765

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: Terry McGee-BMS

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 24-BOR-1765**

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 April 10, 2024, on appeal filed March 21, 2024.

The matter before the Hearing Officer arises from the March 6, 2024 decision by the Respondent to deny the Appellant's admission for Long-Term Care Medicaid assistance.

At the hearing, the Respondent appeared by Terry McGee, Program Manager for Long-Term Care Facilities, Bureau for Medical Services. Appearing as a witness for the Respondent was Melissa Grega, Nurse Reviewer, ACENTRA. The Appellant appeared by [redacted], sister. Appearing as witnesses for the Appellant were [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Decision dated March 6, 2024
D-2 Bureau for Medical Services Provider Manual Chapter 514.6
D-3 Pre-Admission Screening dated March 4, 2024
D-4 Prescription List

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 is a resident at [redacted].

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

3) On March 4, 2024, a Pre-Admission Screening (PAS), a requirement to determine medical eligibility for LTC Medicaid assistance, was conducted by [redacted] (Exhibit D-3)

4) The PAS documented functional deficits in the life areas of Medication Administration, Bathing and Vacating During an Emergency.

5) On March 6, 2024, a Notice of Denial (Exhibit D-1) was issued to the Appellant citing that his request for LTC Medicaid assistance was denied because he did not receive the minimum required deficits to meet the severity criteria.

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

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 his 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.

The March 4, 2024, PAS assessment documented that the Appellant met a functional deficit in the areas of medication administration, bathing, and vacating during an emergency; but, 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 6, 2024.

The Appellant's representative provided testimony indicating that the Appellant suffers from mental issues and depression. The Appellant's representative expressed safety issues that the Appellant would face if not admitted into a long-term care facility. The Appellant's witness, associated with [redacted] conceded that the Appellant does not have the required number of deficits for continued stay at the facility, but inquired about additional resources to aid the Appellant with his mental health issues.

Evidence failed to support that the Appellant met the severity criteria for the required number of the deficits outlined in the PAS assessment. Because the Appellant failed to meet the minimum

requirements of 5 deficits, the Respondent's decision to deny the Appellant's request for LTC Medicaid assistance is affirmed.

CONCLUSIONS OF LAW

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

2) The Appellant was awarded three (3) deficits on the PAS assessment completed March 4, 2024.

3) No additional deficits were awarded to the Appellant based on testimony during the hearing process.

4) The Appellant does not meet medical eligibility requirements for LTC 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 April 2024.

_____

Eric L. Phillips
State Hearing Officer