October 23, 2024

[redacted]

RE: [redacted] v. DoHS/BUREAU FOR MEDICAL SERVICES
ACTION NO.: 24-BOR-3198

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Terry McGee, Bureau for Medical Services

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 24-BOR-3198**

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 October 15, 2024, on an appeal filed on September 13, 2024.

The matter before the Hearing Officer arises from the August 7, 2024, decision by the Respondent to deny medical eligibility for Long Term Care Medicaid benefits.

At the hearing, the Respondent appeared by Terry McGee, Bureau for Medical Services. Appearing as a witness for the Respondent was Melissa Grega, Nurse Reviewer with Acentra. The Appellant represented herself. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Denial dated August 7, 2024
D-2 Bureau for Medical Services Policy Manual Chapter 514
D-3 Pre-Admission Screening dated August 6, 2024
D-4 Medication Order Summary Report

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 of [redacted]

2) A Pre-Admission Screening (PAS) was completed for the Appellant on August 6, 2024, in conjunction with her application for Long Term Care Medicaid (Exhibit D-3).

3) No functional deficits were identified on the August 6, 2024, PAS for the Appellant.

4) The Respondent sent a notice to the Appellant on August 7, 2024, advising that medical eligibility for Long Term Care Medicaid was denied as the severity criteria of at least five functional deficits was not established (Exhibit D-1).

APPLICABLE POLICY

Bureau for Medical Services Policy Manual Chapter 514 explains eligibility for nursing facility services:

514.5.1 Application Process
An application for nursing facility benefits may be requested by the resident, the family/representative, the physician, or a health care facility. The steps involved in approval for payment of nursing facility services are:

- The financial application for nursing facility services is made to the local the State office; and
- The medical eligibility determination is based on a physician's assessment of the medical and physical needs of the individual. At the time of application, the prospective resident should be informed of the option to receive home and community-based services. The Pre-Admission Screening (PAS) assessment must have a physician signature dated not more than 60 days prior to admission to the nursing facility. A physician who has knowledge of the individual must certify the need for nursing facility care.

514.5.2 Pre-Admission Screening (PAS)
The PAS for medical necessity of nursing facility services is a two-step process. The first step (Level I) 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. The second step (Level II) identifies if the individual needs specialized services for a major mental illness, mental retardation, and/or developmental disability.

514.5.3 Medical Eligibility Regarding Pre-Admission Screening

To qualify medically for the nursing facility Medicaid benefit, an individual must need direct nursing care24 hours a day, seven days a week. The State has designated a tool known as the Pre-Admission Screening (PAS) form (Appendix B) 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 the State/designee in order to qualify for the Medicaid nursing facility benefit. 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 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 the 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 assists 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 of 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

This assessment tool must be completed, signed and dated by a physician. The physician's signature indicates "to the best of my knowledge, the patient's medical and related needs are essentially as indicated." It is then forwarded to the State or its designee for medical necessity review. The assessment tool must be completed and reviewed for every individual residing in a nursing facility, regardless of the payment source for services.

DISCUSSION

To qualify medically for the Long Term Care Medicaid, an individual must need direct nursing care 24 hours a day, seven days a week. The Respondent has designated a tool known as the Pre-Admission Screening (PAS) form 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.

The Respondent denied the Appellant's application for Long Term Care Medicaid as no deficits were awarded on the August 6, 2024, PAS. The Appellant argued that she should have received deficits in the areas of vacating in an emergency, bathing, dressing, bowel incontinence and walking.

Walking
The Appellant testified that she was admitted to the nursing facility with a broken hip and a broken shoulder. The Appellant stated she had shoulder surgery in May 2024 and is scheduled for hip surgery in November 2024. The Appellant contended that she has been non-weight bearing since her admission and she does not walk at all.

Vacating in an Emergency
The Appellant testified that she ambulates using a wheelchair with difficulty due to her shoulder and would be unable to open the fire doors to vacate the facility in an emergency.

Bathing
The Appellant testified that she requires assistance getting into and out of the shower and assistance washing her left shoulder, left side and back due to limited range of motion with the shoulder that was repaired in May.

Dressing
The Appellant stated she requires assistance with dressing, especially with pants and shorts. The Appellant stated she cannot bend over to reach her feet or ankles and requires someone to assist her with those items of clothing.

Bowel Incontinence
The Appellant testified that she has irritable bowel syndrome with constipation and takes laxatives regularly. The Appellant stated that two or three times a week she will have an accident in her sleep.

The Appellant provided credible testimony regarding her inability to walk throughout her stay in the nursing facility due to a broken hip. Based on the Appellant's inability to walk or bear weight on her hip and difficulty propelling her wheelchair due to her shoulder, the Appellant would be unable to vacate a building in an emergency. Deficits will be awarded to the Appellant in the areas of vacating in an emergency and walking.

The Appellant testified that she is occasionally incontinent of the bowel due to medications used to treat irritable bowel syndrome. A deficit will be awarded in the area of bowel incontinence.

The Appellant's reliable testimony regarding her limited movement with her right shoulder supports her contention that she requires assistance with dressing and bathing. Deficits will be awarded in the areas of bathing and dressing.

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 deficits to be medically eligible for Long Term Care Medicaid.

2) Based on the Appellant's testimony, deficits in vacating in an emergency, bathing, dressing, walking and bowel incontinence were identified for the Appellant.

3) The Appellant meets the medical eligibility criteria for Long Term Care Medicaid.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the State Hearing Officer to deny medical eligibility for Long Term Care Medicaid.

ENTERED this 23rd day of October 2024.

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Kristi Logan
Certified State Hearing Officer