



October 31, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS-BUREAU FOR MEDICAL SERVICES  
ACTION NO.: 24-BOR-3342

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 assure 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 II, BMS

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW**

██████████,

**Appellant,**

v.

**Action Number: 24-BOR-3342**

**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 ██████████. 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 30, 2024, on appeal filed October 2, 2024.

The matter before the Hearing Officer arises from the July 26, 2024 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 pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision dated July 26, 2024
- D-2 Bureau of Medical Services Policy 514-Nursing Facility Services
- D-3 Pre-Admission Screening dated July 25, 2024
- D-4 Various Medical Reports

**Appellant's Exhibits:**

- A-1 Letter from ██████████ dated July 31, 2024
- A-2 Letter from ██████████ dated August 7, 2024
- A-3 Letter from ██████████ dated October 15, 2024

A-4 Letter from [REDACTED]  
dated September 16, 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 Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant is a resident at the [REDACTED] nursing home facility.
- 2) The Appellant's medical eligibility was assessed for Long-Term Care (LTC) Medicaid assistance.
- 3) On July 25, 2024, a Pre-Admission Screening (PAS), a requirement to determine medical eligibility for LTC Medicaid assistance, was conducted by [REDACTED] M.D.
- 4) The PAS documented functional deficits in the areas of need of bathing, dressing and vacating during an emergency.
- 5) On July 26, 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

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 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.

On July 25, 2024, a PAS was completed which documented that the Appellant met the criteria for a functional deficit in the areas of bathing, dressing and vacating during an emergency. The information submitted in the PAS 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 July 26, 2024.

The initial hearing request dated October 2, 2024, listed the Appellant’s wife, [REDACTED] as his Attorney-In-Fact. On October 3, 2024, the Appellant, through counsel, revoked [REDACTED] power and authority as Attorney-In-Fact. At the hearing, the Appellant represented himself and provided various letters to support his requirement for long term care assistance. All evidence was admitted into the record and provided the necessary weight when arriving at a decision on the contested matter.

The Appellant contends that additional deficits should be awarded in the areas of grooming, bladder incontinence and transferring.

**Grooming**-The Appellant cited shaving as a grooming task which he could not complete and required assistance from the nursing facility staff. The Appellant testified that he could participate in some grooming tasks; however, his inability to stand for long periods affected his overall ability. Evidence from the Appellant (Exhibit A-1) confirms the Appellant's inability to stand for any length of time and reveals that the Appellant requires assistance with clipping his toenails and fingernails, as well as, his need for assistance with shaving.

Evidence from the Appellant revealed his placement in the nursing facility due to a fall with a required surgery on his elbow. Evidence supports that the Appellant requires assistance with shaving and nailcare. Because the Appellant requires physical assistance for completion with this area of need, a deficit **has been established** in the contested area.

**Bladder Incontinence**-The Appellant contends that a deficit should be awarded in the area of incontinence because he requires the use of incontinence supplies with a twice daily change due to urinary incontinence. Evidence from the Appellant indicates that Appellant's use of incontinence supplies and that prostate issues affect his continence.

Credible testimony reveals the Appellant has daily episodes of bladder incontinence. Due to the frequency of the Appellant's bladder incontinence, which requires a daily change of incontinence supply, a deficit **has been established** in the contested area.

**Transferring**-The Appellant contends that a deficit should be awarded in the area of transferring. The Appellant testified that he is able to pull himself up from his bed with the use of a bed rail and utilizes a wheelchair. Evidence from the Appellant indicates that he is able to physically transfer and did not indicate that he requires physical assistance to aide in this area of need.

Because the Appellant does not require physical assistance with transferring, a deficit in the contested area cannot be awarded.

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 three (3) deficits on the PAS assessment completed July 25, 2024.
- 3) Based on evidence, two additional deficits were awarded in the area of bladder incontinence and grooming.
- 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 October 2024.**

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Eric L. Phillips  
**State Hearing Officer**