October 30, 2024

RE: v. WVDoHS-BUREAU FOR MEDICAL SERVICES
ACTION NO.: 24-BOR-3354

Dear :

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: BMS
Attorney-In-Fact

Board of Review • 1900 Kanawha Boulevard East • Building 6, Suite 817 • Charleston, West Virginia 25305
304.352.0805 • OIGBOR@WV.GOV

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[REDACTED],

Appellant,

v. **Action Number: 24-BOR-3354**

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 24, 2024, on an appeal filed October 1, 2024.

The matter before the Hearing Officer arises from the September 24, 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 was represented by her Attorney-In-Facts, [REDACTED] Appearing as witnesses were [REDACTED], Administrator-[REDACTED] Director of Nursing-[REDACTED] All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Decision dated September 24, 2024
D-2 Bureau of Medical Services Policy 514
D-3 Pre-Admission Screening dated September 23, 2024
D-4 Medication Review Report

Appellant's Exhibits:

A-1 Various Medical Reports

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

3) On September 23, 2024, a Pre-Admission Screening (PAS), a requirement to determine medical eligibility for LTC Medicaid assistance, was conducted by [redacted] M.D. (Exhibit D-3)

4) The PAS documented functional deficits in the areas of need of Bathing, Dressing, Grooming and Medication Administration.

5) On September 24, 2024, a Notice of Denial (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.

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 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 September 23, 2024, a PAS was completed which documented that the Appellant met the criteria for a functional deficit in the areas of medication administration, grooming, bathing and dressing. However, 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 September 24, 2024.

The Appellant's representatives contend that additional deficits should have been awarded in the areas of walking, orientation and incontinence.

Walking-The Appellant's representatives contend that the Appellant requires assistance with walking due to the removal of a ganglion cyst from her foot in August 2024. Testimony indicated that her wound from the surgery has not healed properly and the Appellant required a follow-up surgical procedure in October 2024. Testimony indicated that the Appellant requires the assistance of the furniture in her room to ambulate.

Testimony revealed the Appellant's inability to walk due to a recent foot surgery and her requirement of furniture or an assistive device. However, on the September 2024 PAS, the Appellant was rated as a Level 2, requiring an assistive device, and no testimony was provided which revealed that the Appellant required physical assistance with ambulation; therefore, a deficit in the contested area cannot be awarded.

Bladder Incontinence-The Appellant's representatives contend that the Appellant experiences at least four to five episodes of daily incontinence which require a change of incontinence supplies. Testimony indicated that the Appellant changes her own incontinence supplies because she cannot get any immediate assistance from the nursing home staff.

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

Bowel Incontinence-The Appellant's representatives contend that the Appellant experiences episodes of bowel incontinence due to constipation which requires medical attention.

While testimony reveals the Appellant requires medical assistance for constipation, there was no testimony to support that the Appellant experiences bowel incontinence or its frequency. Therefore, a deficit in the contested area cannot be awarded.

Orientation-The Appellant's representatives contend that the Appellant experiences orientation issues because she is unaware of the day of the week.

While testimony reveals the Appellant experiences some confusion on a daily basis, the Appellant was oriented on the day of the assessment and there was no additional information provided to support the Appellant's difficulties with orientation. Therefore, 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 four (4) deficits on the PAS assessment completed September 23, 2024.

3) One additional deficit was awarded in the area of bladder incontinence based on testimony during the hearing.

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.

____

Eric L. Phillips
State Hearing Officer