December 10, 2024

[redacted]

RE: [redacted] v. WV DoHS/BMS
ACTION NO.: 24-BOR-3690

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,

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

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

cc: Kesha Walton - Bureau for Medical Services
Terry McGee, II – Bureau for Medical Services
[redacted]

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted]

Appellant,

v. **Action Number: 24-BOR-3690**

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 December 4, 2024.

The matter before the Hearing Officer arises from the Respondent's October 21, 2024 decision to deny the Appellant's eligibility for Medicaid Long-Term Care admission.

At the hearing, the Respondent was represented by Terry McGee, II, Bureau for Medical Services (BMS). Appearing as a witness for the Respondent was Melissa Grega, RN, Acentra Health. The Appellant appeared and was represented by [redacted] Appearing as a witness for the Appellant was [redacted] All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:
D-1 Acentra Health Notice of Denial for Long-Term Care, dated October 21, 2024
D-2 Acentra Health Chapter 514 excerpts
D-3 Pre-Admission Screening (PAS), submitted October 18, 2024
D-4 [redacted] Progress Notes, dated October 9, 2024

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) On October 21, 2024, the Respondent issued a notice advising the Appellant his request for Long-Term Care admission was denied because the information provided on the Pre-Admission Screening (PAS) form did not identify at least five (5) areas of care needs that met severity criteria (Exhibit D-1).

2) The October 21, 2024 *Notice of Denial* identified a severe deficit in *Medication Administration* (Exhibit D-1).

3) The Appellant historically has had periods of decision-making incapacity and health care surrogate assignment.

Pre-Admission Screening

4) On October 18, 2024, the Appellant's physician [redacted] completed the PAS with the Appellant (Exhibit D-3).

5) [redacted] did not indicate on PAS #19 that the Appellant was appointed a health care surrogate (Exhibit D-3).

6) [redacted] indicated on PAS #20 that the submitted information contained the most recent health assessment data available for the Appellant (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 was able to vacate the building with supervision (Exhibit D-3).

9) At the time of the PAS, the Appellant was assessed as Level 1 Self/Prompting or Independent for *eating, bathing, dressing, grooming, transferring,* and *walking* (Exhibit D-3).

10) At the time of the PAS, the Appellant received supervision with showers (Exhibit D-3).

11) At the time of the PAS, the Appellant was continent of bowel and bladder (Exhibit D-3).

12) At the time of the PAS, the Appellant was *oriented* (Exhibit D-3).

13) At the time of the PAS, the Appellant did not utilize a wheelchair (Exhibit D-3).

14) At the time of the PAS, the Appellant did not have any professional or technical care needs (Exhibit D-3).

15) On PAS #34, [redacted] indicated that within the last two years, the Appellant has exhibited "*withdrawn depressed [sic]"; suicidal thoughts, ideations/gestures;* and *physically dangerous to self and others, if unsupervised* (Exhibit D-3).

16) [redacted] indicated the Appellant's prognosis was stable, his rehabilitative potential was good, and indicated the Appellant would eventually be able to return home or be discharged (Exhibit D-3).

17) [redacted] recommended the Appellant for nursing facility placement only for 90 days (Exhibit D-3).

18) [redacted] recommended that the services and care to meet the Appellant's needs could be provided at the nursing home level of care (Exhibit D-3).

19) On October 9, 2024, [redacted] completed a *physician progress note* (Exhibit D-4).

20) [redacted] indicated on the *physician progress note* that the Appellant "has been doing well," "has had no recent med changes, no recent falls, no skin breakdown" (Exhibit D-4).

21) [redacted] noted on the *physician progress note* that the Appellant "does use a cane or wheelchair as needed d/t hip discomfort." (Exhibit D-4).

APPLICABLE POLICY

Bureau for Medical Services (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

DISCUSSION

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. During the hearing, the Appellant's representative argued that that Appellant's functioning has declined since the PAS and he should be found eligible for Medicaid LTC benefits.

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 denial. 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 deficits that were present at the time of the PAS. The Respondent bears the burden of proof. The Respondent had to prove by a preponderance of the evidence that the Appellant did not have deficits in five functioning areas at the time of the PAS.

The Board of Review may only consider information relevant to the Appellant's functional abilities at the time of the PAS. Submitted testimony regarding the Appellant's decline in functional abilities after the October 21, 2024 LTC eligibility denial was given little weight in the decision of this Hearing Officer.

During the hearing, the Appellant's representative testified that the Appellant maintained capacity to make his own medical decisions until September 27, 2024. [redacted] testified that the physician determined the Appellant was incapable of making his own healthcare decisions on October 10, 2024, and [redacted] was appointed as the Appellant's health care surrogate. Documentary evidence to corroborate the date of the Appellant's incapacity was not submitted.

Testimony regarding the HCS appointment conflicted with the information provided on the PAS and the physician note. The PAS indicated that the Appellant authorized the release of medical information for the PAS on October 17, 2024, after the Appellant's representative indicated he was determined to be incapable of making his own decisions. On the PAS, [redacted] did not indicate that the Appellant was appointed a health care surrogate, and noted the Appellant provided

his own permission for medical release of information during the PAS (Exhibit D-3). The parties did not dispute that the Appellant was appointed a HCS at the time of the hearing.

Pre-Admission Screening

The submitted testimony and documentary evidence indicated that the Appellant did not have a decubitus at the time of the PAS, therefore a severe deficit could not be identified for *decubitus*.

To have a severe deficit identified in *vacating*, the Appellant had to be mentally or physically unable to vacate the building in the event of an emergency. The PAS reflected that the Appellant was able, with supervision, to vacate the building during an emergency.

Eating, bathing, dressing, grooming, transferring, and *walking* were assessed as independent or self/prompting. To receive deficits in these areas, the Appellant must require physical assistance. During the hearing, the Appellant's representative testified that his functioning had declined in these areas since the time of the PAS. [redacted] testified that the Appellant now requires physical assistance with bathing, grooming, and transferring, and requires one-to-one staff due to suicidal ideation. [redacted] reported that she was not aware at the time of the PAS that the Appellant required physical assistance.

To receive a deficit for *wheeling*, the Appellant had to be assessed as Level 3 or higher – one-person physical assistance. The PAS reflected that the Appellant did not use a wheelchair. The October 9, 2024 *physician progress note* indicated that the Appellant uses a wheelchair or cane as needed due to hip discomfort. While this discrepancy indicates the Appellant requires the use of assistive devices at times, the physician note does not stipulate that the Appellant required physical assistance to complete tasks in these areas at the time of the PAS.

To receive a deficit for *continence*, the Appellant had to be assessed as Level 3 or higher – totally incontinent. The PAS revealed that the Appellant was assessed as continent of bladder and bowel. Reliable evidence was not submitted to corroborate that the Appellant was incontinent at the time of the PAS.

To receive a deficit for *orientation*, the client must be assessed as Level 3 - totally disoriented or comatose. During the hearing, information was provided regarding the Appellant's medical history, short term memory issues, and appointment of health care surrogate. While testimony provided that the Appellant lacked healthcare decision making capabilities, the submitted information was not sufficient to verify that the Appellant was totally disoriented or comatose at the time of the PAS. The October 9, 2024 physician note indicated that the Appellant had been doing well and did not contain any information to indicate the Appellant was disoriented.

To receive a deficit for *skilled needs*, the Appellant had to require suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigation care. Professional and technical care needs were not indicated for the Appellant on the PAS or *physician progress note*.

The physician recommended nursing home placement only for 90 days, which is consistent with the stable prognosis and assessment that the Appellant would be able to return home or be

discharged. However, the physician's nursing home placement recommendation did not establish that the Appellant presented with five severe functioning deficits at the time of the PAS as required for establishing Medicaid LTC eligibility.

Because the preponderance of evidence failed to reveal the presence of additional severe functioning deficits at the time of the PAS, the Respondent's decision to deny the Appellant medical eligibility for Medicaid LTC was correct.

CONCLUSIONS OF LAW

1) To be eligible for Medicaid Long-Term Care, the Appellant had to have five areas of care deficits that met severity criteria at the time of the October 18, 2024 PAS.

2) The preponderance of evidence revealed that the Appellant had one severe functioning deficit at the time of the PAS.

3) Because the Appellant did not have five areas of care deficits that met severity criteria at the time of the PAS, the Respondent correctly denied the Appellant's Medicaid LTC eligibility.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's October 21, 2024 decision to deny the Appellant medical eligibility for the Medicaid Long-Term Care program.

ENTERED this 10th day of December 2024.

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Tara B. Thompson, MLS
State Hearing Officer