January 16, 2025

[redacted]

RE: [redacted] v. WV DoHS
ACTION NO.: 24-BOR-3689

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Kesha Walton, Department Representative
Terry McGee, II, Department Representative

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WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 24-BOR-3689**

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 19, 2024, on a timely appeal filed November 13, 2024.

The matter before the Hearing Officer arises from the November 7, 2024 decision by the Respondent to deny medical eligibility for Long Term Care Medicaid (LTC-M).

At the hearing, the Respondent appeared by Terry McGee, II. Appearing as a witness for the Respondent was Melissa Grega. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

D-1 Notice of decision, dated November 7, 2024

D-2 ACENTRA document summarizing or excerpting Department policy

D-3 Pre-Admission Screening (PAS) form, dated November 5, 2024

D-4 Order Summary Report, [redacted]

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 nursing home resident who was evaluated for Long Term Care Medicaid (LTC-M) in November 2024.

2) An assessment of the Appellant was documented in a Pre-Admission Screening (PAS) document (Exhibit D-3), completed November 5, 2024, by [redacted] and reviewed on November 7, 2024, by Melissa Grega, the Respondent's assessing nurse.

3) The Appellant's November 2024 PAS (Exhibit D-3) revealed four (4) deficits as defined by medical eligibility policy: *medication administration*, *grooming*, *bathing*, and *dressing*.

4) The Respondent issued a November 7, 2024 (Exhibit D-1) notice to the Appellant, advising that her "…request for Long-Term Care (Nursing Facility) admission has been denied," because "…Documentation does not reflect that you have five (5) deficits at the level required…"

5) This notice (Exhibit D-1) indicates that the assessment of the Appellant "…reflected deficiencies that meet the severity criteria in 4 areas…": *medication administration*, *grooming*, *bathing*, and *dressing*.

6) The Appellant disputed the Respondent's findings in the areas of *continence* and *walking*.

7) The Appellant is continent of bladder and bowel, or Level 1, in the area of *continence*.

8) The Appellant requires supervision or an assistive device in the area of *walking*, or Level 2.

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 514.5.3 *Medical Eligibility Regarding the PAS* provides in part:

> To qualify medically 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 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 a BMS/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

DISCUSSION

The Appellant requested a hearing to appeal the Respondent's decision to deny Long Term Care Medicaid (LTC-M) based on medical findings. The Respondent must show, by a preponderance of the evidence, that it correctly denied the Appellant's LTC-M on this basis.

The Appellant is a resident in a nursing facility and was assessed for LTC-M in November 2024. The findings from this assessment were recorded on a PAS document (Exhibit D-3) completed by a physician from the facility identified as [redacted] This document was reviewed by the Respondent's assessing nurse to determine the number of "area of care needs," or deficits, that

meet the LTC-M policy severity criteria. Five (5) deficits are required to establish medical eligibility for LTC-M, and the Appellant was assessed with four (4) deficits. At the hearing, the Appellant disputed Respondent findings in the areas of *continence* and *walking*.

The Appellant testified regarding *continence* of bladder and bowel. She stated that she wears briefs for incontinence. She testified that she does feel a 'need' to use the toilet but is unable to get to the toilet in time. She did not provide clear testimony about the frequency of accidents. However, with the primary source of the accidents being her walking ability rather than an inability to recognize the urge to use the toilet, the Appellant is continent, and a deficit cannot be awarded in that area.

The Appellant testified about her walking ability. She testified she walks with "some support." She explained that she uses a walker, or an assistive device. The assessment of the Appellant noted her functional ability in the area of walking as requiring supervision or an assistive device. The Appellant testified that she has had some "bad falls" but could not provide clear testimony regarding the frequency of these falls. It was unclear whether the falls were while walking with or without the use of a walker. The Appellant was correctly assessed in the area of *walking* and a deficit cannot be awarded in that area.

Based on the reliable evidence and testimony from the hearing, the Respondent correctly assessed the Appellant with four (4) deficits and was correct to deny Long Term Care Medicaid to the Appellant based on the medical findings on her November 2024 PAS.

CONCLUSIONS OF LAW

1) Because reliable evidence and testimony revealed no additional deficits, the Appellant was correctly assessed with four (4) deficits, or area of care needs.

2) Because the Appellant did not have at least five (5) deficits, medical eligibility criteria for LTC-M was not met.

3) Because medical eligibility for LTC-M was not met, the Respondent correctly denied LTC-M benefits to the Appellant.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the action of the Respondent to deny the Appellant's Long Term Care Medicaid benefits based on medical eligibility findings.

ENTERED this _____ day of January 2025.

_____

Todd Thornton
State Hearing Officer