February 5, 2025

REMOVED

RE: REMOVEDv. DoHS/BUREAU FOR MEDICAL SERVICES
ACTION NO.: 25-BOR-1084

Dear REMOVED

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,

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

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

cc: Terry McGee/Kesha Walton, Bureau for Medical Services

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

REMOVED

Appellant,

v. **Action Number: 25-BOR-1084**

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 REMOVEDThis 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 January 29, 2025.

The matter before the Hearing Officer arises from the November 22, 2024. decision by the Respondent to deny the Appellant medical eligibility for Long Term Care services.

At the hearing, the Respondent appeared by Terry McGee, Bureau for Medical Services. The Appellant appeared by her nephew REMOVED and his wife, REMOVED The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Denial dated November 22, 2024
D-2 Bureau for Medical Services Provider Manual §514.6
D-3 Pre-Admission Screening dated November 21, 2024
D-4 Medication Review 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 was a recipient of Long Term Care (LTC) Medicaid benefits.

2) On November 21, 2024, the Appellant underwent a medical assessment to determine continued medical eligibility for LTC Medicaid (Exhibit D-3).

3) A Pre-Admission Screening (PAS), the assessment tool utilized to determine medical eligibility for LTC Medicaid, was completed on November 21, 2024 (Exhibit D-3).

4) The Appellant has diagnoses of dementia, major depressive disorder and chronic kidney disease, stage 4 and her condition is deteriorating (Exhibits D-3 and D-4).

5) The November 2024 PAS was signed by REMOVED D.O., who certified that the Appellant would be unable to be discharged home and recommended a nursing facility level of care (Exhibit D-3).

6) The PAS identified one deficit in the area of *medication administration* (Exhibit D-3).

7) The Respondent issued a notice of denial on November 22, 2024, advising that medical eligibility for LTC admission could not be established as the documentation did not reflect at least five deficits at the required severity level (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 LTC 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 Appellant underwent an annual medical redetermination for LTC Medicaid in November 2024. The Respondent determined that the Appellant no longer met the medical criteria for LTC Medicaid as she was only awarded one deficit in the area of *medication administration.*

The Appellant's nephew, REMOVED testified that the Appellant's condition has deteriorated since she was admitted to the nursing facility four years ago. REMOVED argued that the Appellant is completely disoriented and is unable to vacate in an emergency, walk or transfer independently or assist with bathing, dressing and grooming. REMOVED stated that the Appellant only wears hospital gowns due to frequent bouts of incontinence.

The Appellant's representative provided credible testimony that the November 2024 PAS was not an accurate reflection of the Appellant's functional abilities. Based on the Appellant's dementia diagnosis, it is a reasonable that the Appellant would be mentally unable to vacate a building in an emergency. There was no testimony from the Respondent regarding the deficit that was awarded in *medication administration*, whether the Appellant is mentally unable to administer her own medications due to dementia, or if the deficit is due to physical inability. Without information explaining the awarded deficit, it is likely that there are functional areas in which the Appellant was not correctly assessed. Furthermore, the Appellant's physician documented her need for a nursing facility level of care and that she would be unable to be discharged to home.

Whereas the documentation submitted was insufficient to accurately determine the Appellant's functional abilities, the denial of medical eligibility for LTC Medicaid cannot be affirmed.

CONCLUSIONS OF LAW

1) An individual must have a minimum of five deficits as derived from the Pre-Admission Screening tool to be medically eligible for Long Term Care Medicaid.

2) The Appellant was awarded one deficit on the November 2024 Pre-Admission Screening.

3) Credible testimony revealed inaccuracies from the November 2024 regarding the Appellant's functional abilities.

4) The documentation submitted was insufficient to establish medical eligibility for Long Term Care Medicaid.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to deny medical eligibility for Long Term Care services. The matter is **remanded** to the Respondent for a new Pre-Admission Screening to be completed for the Appellant for redetermination of medical eligibility.

ENTERED this 5th day of February 2025.

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Kristi Logan
Certified State Hearing Officer