February 11, 2025

REMOVED

RE: REMOVED v. DoHS/BUREAU FOR MEDICAL SERVICES
ACTION NO.: 25-BOR-1095

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: Bureau for Medical Services

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

REMOVED

Appellant,

v. **Action Number: 25-BOR-1095**

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES
BUREAU FOR MEDICAL ASSISTANCE,

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for REMOVED REMOVED 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 February 5, 2025.

The matter before the Hearing Officer arises from the November 21, 2024, decision by the Respondent to deny medical eligibility for Long Term Care Medicaid.

At the hearing, the Respondent appeared by Terry McGee, Bureau for Medical Services. Appearing as a witness for the Respondent was Melissa Grega, Acentra Health. The Appellant appeared by his sisters, REMOVED and 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 21, 2024
D-2 Bureau for Medical Services Provider Manual §514.6
D-3 Pre-Admission Screening dated November 19, 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 applied for Long Term Care (LTC) Medicaid.

2) A Pre-Admission Screening (PAS), the assessment tool used to determine medical eligibility for LTC Medicaid, was completed for the Appellant on November 19, 2024 (Exhibit D-3).

3) The Appellant was awarded a deficit in the area of *vacating in an emergency* (Exhibit D-3).

4) The Respondent sent a notice of denial on November 21, 2024, advising the Appellant that his request for LTC admission had been denied as the documentation did not reflect five deficits at the required 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 assessment in November 2024 to determine medical eligibility for LTC Medicaid. The Respondent determined that the Appellant failed to meet the medical criteria for LTC Medicaid as he was awarded only one deficit in the area of *vacating in an emergency*.

The Appellant's representative, REMOVED contended that the Appellant should have received deficits in *medication administration*, *walking*, *orientation* and *eating*.

Medication Administration

REMOVED testified that the Appellant cannot read and requires someone to read the labels of medications bottles to him. REMOVED stated the Appellant could take his own medications with supervision. The Appellant was assessed as requiring prompting/supervision under *medication administration*, which does not qualify as a deficit. Based on REMOVED testimony, the Appellant was correctly assessed in this area and a deficit cannot be awarded.

Walking

REMOVED testified that the Appellant does not walk well and walks with a limp. The Appellant was assessed as Level 1 - independent - in walking. To receive a deficit in *walking*, the Appellant would require hands-on physical assistance to ambulate. Based on the testimony provided, a deficit in *walking* cannot be awarded.

Orientation

REMOVED purported that the Appellant has a seizure disorder and has recently become disoriented, not recognizing family members and appearing unaware of his surroundings. The Appellant was assessed as Level 2 - intermittent disorientation. To receive a deficit in the area of *orientation*, a rating of Level 3 – total disorientation – is required. The Appellant does not qualify for a deficit in *orientation*.

Eating

REMOVED testified that the Appellant cannot cook but is able to feed himself. The Appellant was assessed as Level 1 - self/prompting - in *eating*. To receive a deficit in the area of *eating*, the Appellant would require physical assistance to receive nourishment, policy specifically excludes meal preparation. Because the Appellant has the physical ability to eat, a deficit cannot be awarded in this area.

Whereas the Appellant is exhibiting one deficit as derived from the November 2024, he does not meet the medical eligibility criteria for LTC Medicaid.

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) The testimony provided failed to establish that the Appellant was exhibiting at least five deficits as found in policy.

4) The Respondent's decision to deny medical eligibility for Long Term Care Medicaid is affirmed.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's application for Long Term Care Medicaid.

ENTERED this 11th day of February 2025.

_____

Kristi Logan
Certified State Hearing Officer