



February 14, 2025

REMOVED

RE: **REMOVED** v. DoHS/BUREAU FOR MEDICAL SERVICES
ACTION NO.:25-BOR-1127

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-1127

**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 **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 11, 2025.

The matter before the Hearing Officer arises from the November 18, 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 her daughter, **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 18, 2024
- D-2 Bureau for Medical Services Provider Manual §514.6
- D-3 Pre-Admission Screening dated November 16, 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 16, 2024 (Exhibit D-3).
- 3) The Appellant was awarded a deficit in the area of *medication administration* (Exhibit D-3).
- 4) The Respondent sent a notice of denial on November 18, 2024, advising the Appellant that her 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 care 24 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 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 she was awarded only one deficit in the area of *medication administration*.

The Appellant's daughter, [REMOVED] contended that the Appellant should have received deficits in *vacating in an emergency*, *bathing*, and *grooming*.

Vacating in an Emergency

The Appellant was assessed as independent in the area of *vacating in an emergency*. [REMOVED] testified that her mother has cognitive functioning like a child and she would not understand the need to vacate if there was an emergency. Based on [REMOVED] description of the Appellant's cognitive abilities, the Appellant would be mentally unable to vacate in an emergency and a deficit will be awarded in that area.

Bathing

The Appellant was assessed as Level 1 – self/prompting – in the area of *bathing*. [REMOVED] testified that the Appellant requires assistance with *bathing* although she attempts to shower on her own. A deficit will be awarded in *bathing*.

Grooming

The Appellant was assessed as a Level 1 – self/prompting – in the area of *grooming*. [REMOVED] testified that the nursing staff wash and brush the Appellant's hair. Based on the Appellant's need for assistance with *grooming*, a deficit will be awarded in this area.

Based on the credible testimony provided, the Appellant requires assistance with *bathing* and *grooming* and would be mentally unable to *vacate in an emergency*. However, with the addition of *vacating*, *bathing* and *grooming* to *medication administration* that was awarded previously, only four deficits were established for the Appellant.

Whereas policy requires the presence of five deficits to qualify medically for LTC Medicaid and the Appellant has four deficits as derived from the November 2024 PAS, the Respondent acted in accordance with policy in the denial of LTC Medicaid for the Appellant.

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 established that the Appellant was exhibiting deficits in *vacating in an emergency*, *bathing* and *grooming*.

- 4) The Appellant does not meet the medical eligibility requirements of five deficits.
- 5) 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 14th day of February 2025.

Kristi Logan
Certified State Hearing Officer