



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jim Justice
Governor

BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326

Bill J. Crouch
Cabinet Secretary

October 2, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2308

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision
Form IG-BR-29
cc: Tamra Grueser

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

████████████████████,

Appellant,

v.

ACTION NO.: 17-BOR-2308

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on September 21, 2017, on an appeal filed August 5, 2017.

The matter before the Hearing Officer arises from the July 18, 2017 decision by the Department to deny eligibility for Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN from the Bureau for Senior services. Appearing as a witness for the Respondent was ██████████ (Nurse ██████████), RN from KEPRO. The Appellant appeared *pro se* by her daughter and Medical Power of Attorney, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 West Virginia Medicaid Provider Manual, Chapter 501: ADW Services, §501.9, 501.9.1.1, and §501.9.1.2
- D-2 Pre-Admission Screening (PAS), dated June 24, 2017
- D-3 Notice of Potential Denial, dated June 30, 2017
- D-4 Notice of Decision, dated July 18, 2017
- D-5 PAS, dated September 8, 2016

Appellant's Exhibits:

A-1 [REDACTED] Fax sheets, dated August 3, 2017

A-2 Letter by [REDACTED], MD, dated July 19, 2017

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) On June 24, 2017, a PAS was completed for the Appellant's application for the ADW Program. (Exhibit D-2)
- 2) Nurse [REDACTED] evaluated the Appellant and found four (4) functional deficits in the areas of *Vacating a Building, Bathing, Continence, and Transfer*. (Exhibits D-2, D-3, and D-4)
- 3) On June 30, 2017, a Potential Denial letter was sent to the Appellant stating she did not meet medical eligibility criteria in at least five (5) of the thirteen (13) critical areas required by policy for the ADW program. (Exhibit D-3)
- 4) The June 30, 2017 notice advised the Appellant that she had two (2) weeks to submit additional information to demonstrate that the Appellant had deficits in other critical areas. (Exhibit D-3)
- 5) KEPRO received no additional medical documentation from the Appellant or the Appellant's physicians within the two (2) week timeframe.
- 6) On July 18, 2017, A Notice of Decision was sent to the Appellant, demonstrating no additional deficits were being awarded for program eligibility and that the Appellant was found to be medically ineligible for the Aged/Disabled Waiver Program. (Exhibit D-4)
- 7) The Appellant believed she should have been awarded a deficit in the critical area of *Grooming*.
- 8) The Appellant's physician, [REDACTED], MD, submitted a letter to KEPRO, dated July 19, 2017. (Exhibit A-2)
- 9) The physician's letter was received by KEPRO after the two (2) week timeframe indicated in the June 30, 2017 notice.
- 10) Upon the request of the Appellant during the fair hearing, the physician's letter was submitted to the Board of Review by the Respondent.
- 11) The text of the physician's letter was cut-off and not fully comprehensible. (Exhibit A-2)

- 12) The physician's letter recommended the Appellant receive assistance specifically for daily foot examination to prevent recurrence of foot wounds. (Exhibit A-2)
- 13) Daily foot examination would not be a consideration for the area of *Grooming* (Exhibit D-1)
- 14) No information was contained in the physician's letter to indicate that the Appellant needed assistance with specific tasks of *Grooming*. (Exhibit A-2)
- 15) The physician's letter did not indicate that the Appellant's foot-care warranted *Skilled Needs* in the areas of: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations. (Exhibits D-1 and A-2)
- 16) No information was contained in the physician's letter to indicate that the Appellant should have been awarded additional deficits at the time of the June 24, 2017 PAS completion. (Exhibit A-2)

APPLICABLE POLICY

ADW Manual §501.6 ADW Program Eligibility sets forth that:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program: ...

D. Be approved as medically eligible for nursing home level of care and in need of services...

ADW Manual §501.9.1 sets forth the medical eligibility criteria:

An individual must have five (5) deficits on the Pre-Admission Screening (PAS) to qualify medically for the ADW program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24 Decubitis; 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 Functioning abilities of individual in the home

a) Eating: Level 2 or higher (physical assistance to get nourishment, not preparation)

- b) Bathing: Level 2 or higher (physical assistance or more)
- c) Dressing: Level 2 or higher (physical assistance or more)
- d) Grooming: Level 2 or higher (physical assistance or more)
- e), f) Continence (bowel, bladder): Level 3 or higher; must be incontinent
- g) Orientation: Level 3 or higher (totally disoriented, comatose)
- h) Transfer: Level 3 or higher (one-person or two-person assistance in the home)
- i) Walking: Level 3 or higher (one-person assistance in the home)
- j) 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 or more 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 her own medications

DISCUSSION

Pursuant to policy, Applicants for the ADW program must meet all given criteria to be eligible for the program. These criteria include being approved as medically eligible for nursing home level of care and in need of services. KEPRO is the Utilization Management Contractor (UCM) responsible for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services. Per policy, an individual must have five (5) deficits on the PAS to qualify medically for the ADW Program. On June 24, 2017, Nurse [REDACTED] RN, with KEPRO evaluated the Appellant and found four (4) functional deficits in the areas of *Vacating a Building*, *Bathing*, *Continence*, and *Transfer*. The Appellant's daughter and Medical Power of Attorney, [REDACTED], was present during the assessment. On June 30, 2017, a Potential Denial notice was sent to the Appellant stating that she did not meet the medical eligibility criteria threshold of five (5) out of thirteen (13) critical areas required to qualify for the ADW Program. The notice advised that the Appellant had two (2) weeks to submit additional medical information. No medical information was obtained during that two (2) week period and on July 18, 2017, a Notice of Decision was sent to the Appellant advising that no additional deficits were awarded and that she was medically ineligible for the ADW Program. The Appellant contended that she should have been awarded deficits in the area of *Grooming*.

The Respondent had to show by preponderance of evidence that the UMC followed policy in determining the Appellant's medical eligibility for the ADW program: For *Grooming*, the ADW policy requires an assessment of at least a Level 2, physical assistance or more. On the PAS, the Appellant scored Level 1-Self/Prompting. The Appellant reported during the assessment that she could lift her arms and reach all areas of her head for hair care. The Appellant reported during the assessment that she could cut her fingernails; the Appellant's daughter stated that the Appellant needed assistance to cut her toenails. The assessment reflects that the Appellant stated she had just cut her toenails and it was noted the Appellant's toenails were neatly cut. The Appellant reported during the assessment that she could complete her own oral care. During the hearing, the Appellant's representative contended that the Appellant could raise her arms but was unable to hold them up to perform hair care due to the Appellant not being able to breathe. The Appellant's representative argued during the hearing that the Appellant did not tell the nurse she had cut her toenails but had stated that she had picked them off with her fingernails. During the hearing, the Appellant's representative testified that the Appellant can't bend down and maintain enough breath to stay down and cut her nails. Statements by the Appellant in the assessment are contradictory to claims made by the Appellant's representative regarding the Appellant's functioning abilities to perform grooming tasks. No information was included in the assessment or during the fair hearing to indicate that the Appellant was not stable on her medications or was unable to make accurate statements reflecting her abilities to perform her own grooming tasks. The observations made by the assessing nurse were documented in the assessment and corroborate the Appellant's claim that she can reach and bend to perform her own grooming tasks. Although the Appellant has a diagnosis of Schizoaffective Disorder and the Appellant representative is the Appellant's Medical Power of Attorney, statements made by the Medical Power of Attorney were not given more weight than the Appellant's statements due to no indication that symptoms of the Appellant's illness were present at the time of the assessment that would render the Appellant's statements unbelievable.

The Appellant further contended that the *Grooming* deficit should be awarded due to a wound present during the PAS completion and the July 19, 2017 recommendations of the Appellant's physician. The Appellant argued that the physician's letter could not be obtained during the two (2) week timeframe due to the physician not working during that time. The letter from the Appellant's physician was obtained five (5) days after the two (2) week timeframe had ended. The Respondent argued that there was nothing provided in the physician's letter that could have been applied to demonstrate that an additional deficit should have been awarded. The Appellant did not submit a copy of the letter to the Board of Review but requested the document be admitted into evidence. The Respondent had no objections, and upon the request of the Appellant, emailed a copy of the letter to this Hearing Officer following the fair hearing. The copy provided to this Hearing Officer had significant portion of text cut off and the full message of the letter could not be discerned. During the hearing the Appellant testified that the letter read that the Appellant "would benefit from assistance with personal grooming specifically in regard to daily foot examination." The Respondent did not contest the Appellant's interpretation of the letter. However, although the letter reflects that the Appellant would benefit from assistance with personal grooming, there was no specific information contained to reflect what assistance the Appellant required regarding grooming. The Respondent testified that daily feet examination would not be attributed to *Grooming* and would fall into a *Special Needs* category. No information is contained in the letter to indicate specifically what assistance the Appellant required for wound

care outside of daily examination, which is not reflected in the skilled needs areas listed in the policy.

After review of the testimony and evidence presented, the Respondent proved by a preponderance of evidence that the UMC followed policy in determining the Appellant's medical eligibility for the ADW program. The Appellant did not demonstrate that she should be awarded any additional functional deficits. The Appellant is not medically eligible for nursing home level of care and therefore does not meet the given criteria to be eligible for the ADW program. The Appellant qualifies for four (4) functional deficits, which is below the five (5) deficit threshold to establish medical eligibility. The Respondent was correct in its decision to deny the Appellant's medical eligibility for the ADW program.

CONCLUSIONS OF LAW

- 1) Policy requires that an applicant show five (5) functional deficits on the Pre-Admission Screening (PAS) to qualify medically for the ADW Program.
- 2) Policy requires that applicants for the ADW Program must be approved as medically eligible for nursing home level of care and in need of services.
- 3) The Appellant did not demonstrate five (5) functional deficits on the PAS.
- 4) The Respondent was correct in its decision to deny the Appellant medical eligibility for the ADW program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to deny the Appellant's application for the Medicaid Aged/Disabled Waiver Program.

ENTERED this 2nd day of October 2017.

Tara B. Thompson
State Hearing Officer