



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

April 28, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-3098

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 State Hearing Officer 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 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: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra Grueser, Department Representative
[REDACTED], Appellant's Representative
[REDACTED], Appellant's Representative

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 16-BOR-3098

**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 January 18, 2017, then continued and reconvened on March 14, 2017, on an appeal filed December 30, 2016.

The hearing on March 14, 2017 was held by teleconference and technical problems with the teleconferencing service interrupted the hearing and made it impossible to conclude on that date. The parties were reconvened for a teleconference on April 5, 2017, and representatives for both the Appellant and the Respondent agreed that they were satisfied that the testimony on the record at the time of that interruption was sufficient for a decision to be rendered, and that rescheduling to take additional testimony would not be necessary.

The matter before the Hearing Officer arises from the October 26, 2016 decision by the Respondent to deny medical eligibility for the Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as a witness for the Department was ██████████. The Appellant appeared *pro se*. Appearing as witnesses and representatives for the Appellant were ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 501: Aged and Disabled Waiver (ADW), §501.9 (excerpt)
- D-2 Pre-Admission Screening (PAS) form, dated October 5, 2016

- D-3 Medical Necessity Evaluation Request (MNER) form, dated August 25, 2016
- D-4 Potential Denial notice, dated October 6, 2016
- D-5 Notice of Decision, dated October 26, 2016

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 Aged and Disabled Waiver (ADW) services and was assessed to determine her medical eligibility for the program on October 5, 2016.
- 2) The Respondent notified the Appellant on October 26, 2016 (Exhibit D-5) that she was “determined medically ineligible” for ADW, “because you have less than five (5) deficits...”
- 3) This notice (Exhibit D-5) additionally indicates that the Appellant was found to have deficits in the following four (4) critical areas considered for eligibility: bathing, dressing, medication administration, and the ability to vacate a building.
- 4) The nurse for the Respondent that conducted the medical assessment of the Appellant recorded his findings on a Pre-Admission Screening (PAS) form (Exhibit D-2), dated October 5, 2016.
- 5) The PAS included “PAS Overall Comments” regarding the Appellant which read, in part, “[Appellant] able to bend at the waist while seated and touch feet with hands, unless she gets light headed...” (Exhibit D-2, page 12)
- 6) The PAS included comments regarding the Appellant’s functional ability in the critical area of bathing which read, in part, “[Appellant] is usually able to complete the task of bathing, but if she is light headed and cannot bend over she receives help from nursing staff.” (Exhibit D-2, page 7)
- 7) The PAS included comments regarding the Appellant’s functional ability in the critical area of dressing which read, in part, “[Appellant] has limited [range of motion] in right shoulder and needs help with shirts occasionally.” (Exhibit D-2, page 7)
- 8) The Appellant was determined to require physical assistance in the critical areas of bathing and dressing. (Exhibit D-2)

- 9) The PAS included comments regarding the Appellant’s functional ability in the critical area of grooming which read, in part, “[Appellant] is able to clip fingernails and she is able to cut toenails but she frequently cuts her toes due to neuropathy and requires help with that.” (Exhibit D-2, page 8)
- 10) The Appellant requires physical assistance in the critical area of grooming.

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, Chapter 501: Aged and Disabled Waiver (ADW), §501.9.1, sets the medical eligibility criteria for the program as follows:

501.9.1 Medical Criteria

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

Section	Description of Deficits	
#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 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.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
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 for 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 his/her own medications.	

DISCUSSION

The Appellant has appealed the Respondent's decision to deny her medical eligibility for the Aged and Disabled Waiver (ADW) Program based on insufficient deficits to establish medical eligibility. The Respondent must show by preponderance of the evidence that the Appellant did not have the five (5) deficits required to establish ADW medical eligibility.

Medical eligibility for the ADW Program is assessed by a nurse for the Respondent, whose findings are recorded on a PAS. The PAS also includes comments intended to support these findings. The PAS for the Appellant indicates she has deficits in the four (4) critical care areas established by the Respondent but also the additional deficit needed to establish medical eligibility for the ADW Program.

The Respondent awarded deficits to the Appellant in two areas – bathing and dressing – with comments supporting their findings that the Appellant requires physical assistance in these areas. The same comments, in conjunction with the comments for the area of grooming support a finding that Appellant requires physical assistance with grooming. These comments indicated the Appellant has difficulty bending over if she is “light headed,” that she suffers from neuropathy, and range of motion limitations in her right shoulder. The comments about grooming itself indicated she cuts herself when trying to groom her toenails. Based on these comments, the Respondent should have awarded the Appellant a deficit in the area of grooming due to her need for physical assistance in this area.

With a total of five (5) deficits, the Appellant established medical eligibility for the ADW Program and the Respondent was incorrect to deny the Appellant's application.

CONCLUSION OF LAW

Because the Appellant established a total of five deficits in the critical care areas established by ADW policy, the Respondent must not deny the Appellant's application based on medical eligibility.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny medical eligibility for the ADW Program.

ENTERED this ____ Day of April 2017.

**Todd Thornton
State Hearing Officer**