



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

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Cabinet Secretary

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Jolynn Marra  
Inspector General

June 9, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 22-BOR-1567

Dear [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

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

████████████████████,

**Appellant,**

v.

**Action Number: 22-BOR-1567**

**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 June 2, 2022, on an appeal filed April 22, 2022.

The matter before the Hearing Officer arises from the April 13, 2022 decision by the Respondent to terminate services under the Aged and Disabled Waiver Program.

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

**EXHIBITS**

**Department's Exhibits:**

- D-1 Notice of Decision, dated April 13, 2022
- D-2 Notice dated February 18, 2022
- D-3 Pre-Admission Screening (PAS) form, dated February 15, 2022
- D-4 PAS Summary form, dated February 15, 2022
- D-5 PAS Summary form, dated November 16, 2020
- D-6 Medical Necessity Evaluation Request Form  
Date of physician signature: September 3, 2021

### **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 participant in the Aged and Disabled Waiver (ADW) Program.
- 2) An assessment of the Appellant's medical necessity for ADW services was conducted on February 15, 2022. (Exhibit D-3)
- 3) A summary of this assessment (Exhibit D-4) shows two (2) medical eligibility "deficits" were assessed for the Appellant – one in the functional ability of *bathing*, and the other in the functional area of *grooming*.
- 4) The Respondent mailed the Appellant a February 18, 2022 potential denial notice (Exhibit D-2) advising her, "If you believe you have additional information regarding your medical conditions that was not considered, please submit those records to KEPRO within 2 weeks from the date of this letter."
- 5) The Respondent did not receive additional medical records from the Appellant.
- 6) By notice dated April 13, 2022, the Respondent advised the Appellant that "You have been determined medically ineligible for Waiver services. This decision results in the denial of your Waiver services." (Exhibit D-1)
- 7) The notice (Exhibit D-1) specified the two (2) areas in which the Appellant was awarded deficits – bathing and grooming – and noted, "Medical eligibility for the Aged and Disabled Waiver Program requires deficits in at least five (5) of 13 critical areas as mandated in the Medicaid Program Regulations."
- 8) The Appellant testified she needed help with meal preparation.
- 9) The Appellant reported to the Respondent's assessing nurse (Exhibit D-3, page 6 of 11) that she can cut food, feed herself with normal utensils and without the use of adaptive equipment.
- 10) The Appellant was assessed as capable of eating by herself or with prompting. (Exhibit D-3, page 6 of 11)
- 11) The Appellant testified she needed help with household cleaning.

- 12) The Appellant testified she can walk independently, but “only so far” before she is “out of breath.”
- 13) The Appellant reported to the Respondent’s assessing nurse (Exhibit D-3, page 7 of 11) that she can walk “...without hands on assistance of any persons at this time,” and denied the use of medical equipment to assist her.
- 14) The Appellant was assessed as independent in the area of *walking*.
- 15) The Appellant testified that she will “hold onto something” when she stands from a seated position.
- 16) The Appellant reported to the Respondent’s assessing nurse (Exhibit D-3, page 7 of 11) that she can transfer “...without hands on assistance of any person at this time from the bed, toilet, and furniture used inside the home,” and noted her use of assistive devices.
- 17) The Appellant was assessed as requiring supervision or the use of an assistive device in the area of *transferring*.

**APPLICABLE POLICY**

**Bureau for Medical Services Provider Manual §501.11.1 Medical Criteria** provides that an individual must have five deficits as described on the PAS to qualify medically for the ADW program. These deficits are derived from a combination of the following assessment elements on the PAS.

<b>Section</b>	<b>Description of Points</b>	
#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 meal 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 Continence, 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 or two-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 his/her own medications	

### **DISCUSSION**

The Appellant has appealed the Respondent’s decision to terminate her services under the ADW Program. Applicants for ADW services must meet the medical eligibility requirement for at least five (5) deficits in the areas described in program policy. The Respondent must show by a preponderance of the evidence that the Appellant did not have sufficient deficits to meet the ADW medical eligibility requirements.

The Appellant was assessed as having two (2) deficits during a February 2022 (Exhibit D-2) assessment by a Respondent nurse – in the areas of *bathing* and *grooming*.

The Appellant offered testimony about why she needs ADW services that was not relevant to medical eligibility. The Appellant testified she needs help with “running the sweeper” and preparing her meals, but policy does not consider these factors. The Appellant testified regarding three medical eligibility areas from policy – *eating*, *walking*, and *transferring*. The Appellant’s testimony in each area matched the assessed level noted on the February 2022 PAS. The Appellant was correctly assessed as a Level 1 in *eating*, Level 1 in *walking*, and Level 2 in *transferring*. The Appellant did not dispute Respondent findings that she eats independently, walks independently, or that she is capable of transferring with supervision or an assistive device. The Appellant was correctly assessed with two medical eligibility deficits.

With no additional deficits revealed through evidence and testimony, the Appellant did not meet the medical eligibility requirements for the ADW Program. The Respondent correctly terminated the Appellant’s ADW services on this basis.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant was correctly assessed with deficits in two (2) service needs areas, the Appellant did not meet ADW medical eligibility requirement for five (5) deficits.
- 2) Because the Appellant did not establish ADW medical eligibility, the Respondent must terminate ADW services to the Appellant.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's Aged and Disabled Waiver services.

**ENTERED this \_\_\_\_ Day of June 2022.**

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**Todd Thornton  
State Hearing Officer**