



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
304-822-6900

Jolynn Marra
Inspector General

July 19, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1663

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, BoSS

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1663

**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 July 12, 2022, on appeal filed April 25, 2022.

The matter before the Hearing Officer arises from the April 14, 2022 decision by the Respondent to terminate Aged and Disabled Waiver benefits.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Rebecca Monroe, RN, KEPRO. The Appellant appeared pro se. Appearing as witnesses was ██████████, Case Manager, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual § 501.11
- D-2 Pre-Admission Screening dated February 22, 2022
- D-3 Notice of Potential Termination dated March 24, 2022
- D-4 Notice of Decision dated April 14, 2022
- D-5 Medication List
- D-6 Medical Necessity Evaluation Request dated November 29, 2021
- D-7 Pre-Admission Screening Summary dated February 10, 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) On February 22, 2022, the Appellant was evaluated for continued eligibility for the Aged and Disabled Waiver (ADW) Program.
- 2) A Pre-Admission Screening (PAS) assessment was completed with the Appellant to determine his functional abilities in the home. (Exhibit D-2)
- 3) The Appellant was awarded functional deficits in the areas of vacating, grooming, and skilled needs. (Exhibit D-2)
- 4) On March 24, 2022, the Respondent issued a Notice of Potential Termination to the Appellant and his physician. (Exhibit D-3)
- 5) On April 14, 2022, the Respondent issued a Notice of Decision to the Appellant, informing him that he was determined medically ineligible to continue receiving services under the ADW Program because he had less than the five required deficits for eligibility. (Exhibit D-4)
- 6) The Appellant’s 2021 PAS assessment awarded him eight total deficits. (Exhibit D-7)

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.

Section	Description of Points	
#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

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.	Continenence, Bowel Continenence, 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 Medicaid Aged/Disabled Title XIX (HC) Waiver Services Program (ADW Program) identifies medically eligible individuals for the program when they demonstrate five functional deficits in the designated life areas on the Pre-Admission Screening (PAS) assessment. During an annual PAS assessment, the Respondent determined that the Appellant failed to meet the medical requirements of the program because he failed to demonstrate the necessary amount of functional deficits. The Respondent must show by a preponderance of the evidence that the Appellant did not demonstrate the necessary five functional deficits for program eligibility.

Rebecca Monroe, RN, KEPRO, conducted the PAS assessment with both the Appellant and his witness, [REDACTED]. Based on the information provided, the assessing nurse awarded functional deficits in the areas of vacating, grooming, and skilled needs (irrigation of a foley catheter).

The Appellant's witnesses contend that additional deficits should have been awarded in multiple other areas of the assessment. Testimony revealed that the Appellant's physical status and abilities fluctuate on a day-to-day basis which attribute to his need for care. [REDACTED] cited that the Appellant can only provide meals for himself from the microwave, utilizes slip-on shoes to dress, and is considered a fall risk when showering.

The Appellant's witnesses asserted that the Appellant, who is a potential fall risk, required monitoring when bathing. During the assessment, the Appellant reported his ability to bathe independently and transfer to-and-from the shower without assistance. Based on the information provided, no additional deficit can be awarded for bathing because the Appellant performs this activity unassisted.

The Appellant representatives purported that the Appellant can only receive nourishment from meals which he provides himself from a microwave oven. During the assessment, the Appellant and his representatives reported no difficulties in the area of eating indicating an ability to cut food and feed himself with utensils. Based on the information provided, no additional deficit can be awarded for eating because the Appellant performs this activity unassisted.

The Appellant's representatives asserted the Appellant's limited ability to stand and bend over to dress. During the assessment, it was reported that the Appellant dressed his upper and lower body independently. The assessment documents that the Appellant sat down to dress the lower portion of his body, including the use of slip-on shoes. Based on the information provided, no additional deficit can be awarded for dressing because the Appellant performs this activity unassisted.

Based on the information provided during the hearing, no additional deficits can be awarded in the contested areas. The Respondent's decision to terminate ADW services is affirmed.

CONCLUSIONS OF LAW

- 1) An individual must have five functional deficits as derived from the PAS assessment in order to qualify medically for the ADW program.
- 2) The Appellant received functional deficits in the areas of vacating, grooming, and skilled needs.
- 3) Based on information provided during the hearing, no additional deficits can be awarded.

DECISION

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

ENTERED this ____ day of July, 2022.

Eric L. Phillips
State Hearing Officer