



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

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Board of Review
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Sheila Lee
Interim Inspector General

November 7, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-2089

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 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, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

CC: Tamra Grueser, Bureau of Senior Services
Christina Sigman, [REDACTED]

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

████████████████████,

Appellant,

v.

ACTION NO.: 22-BOR-2089

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened October 12, 2022 on an appeal filed with the Board of Review on September 7, 2022.

The matter before the Hearing Officer arises from the Respondent's September 1, 2022 decision to deny the Appellant's medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness on behalf of the Respondent was Rebecca Monroe, RN, KEPRO. The Appellant appeared and represented himself. Appearing as witnesses on behalf of the Appellant were ██████████

All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Chapter §§ 501.11 through 501.11.2.3
- D-2 Notice, dated August 16, 2022
- D-3 Notice, dated September 1, 2022
- D-4 Pre-Admission Screening (PAS), submitted August 31, 2022
- D-5 ██████████ Physician Letter, electronically signed by Jennifer Simon, NP;
██████████ Facsimile Transmittal Cover Sheet, dated August 31, 2022;
██████████, Primary Family Care Facsimile Transmittal Cover Sheet, dated August 30, 2022; ██████████ Physician Letter, electronically signed by ██████████ NP

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a participant of the Medicaid Aged and Disabled Waiver (ADW) program (Exhibit D-4).
- 2) On September 1, 2022, the Respondent issued a notice advising the Appellant that he was medically ineligible for the Medicaid ADW program (Exhibit D-3).
- 3) The September 1, 2022 notice indicated that the Appellant had deficits in the areas of *vacate a building, bathing, grooming, and dressing* (Exhibit D-3).
- 4) On August 31, 2022, the Appellant's witness, [REDACTED] submitted a PAS completed with the Appellant, by telephone, to re-evaluate his medical eligibility for the Medicaid ADW program (Exhibit D-4).
- 5) On the PAS, #37 reflected a completed assessment date of August 15, 2022 (Exhibit D-4).
- 6) At the time of the PAS, the Appellant did not require physical assistance for *eating* (Exhibits D-4 and D-5).
- 7) At the time of the PAS, the Appellant was not incontinent of bowel or bladder (Exhibits D-4 and D-5).
- 8) At the time of the PAS, the Appellant had an unsteady gait (Exhibit D-4).
- 9) At the time of the PAS, the Appellant required continuous oxygen (Exhibit D-4 and D-5).
- 10) At the time of the PAS, the Appellant required one-person physical assistance for *walking* in the home (Exhibit D-4).
- 11) At the time of the PAS, the Appellant required use of his surroundings while balancing during *transferring* (Exhibit D-4).
- 12) On August 24 and August 30, 2022, the Appellant submitted physician letters that affirmed the Appellant has deficiencies in medication administration (Exhibit D-5)
- 13) Based on the physician letters, the Respondent updated the Appellant's ability to administer medications to prompting/supervision (Exhibit D-4).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §§ 501.11.1 provide in pertinent parts:

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

- #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
 - Eating: level 2 or higher (physical assistance to get nourishment)
 - Bathing: level 2 or higher (physical assistance or more)
 - Dressing: level 2 or higher (physical assistance or more)
 - Grooming: level 2 or higher (physical assistance or more)
 - Contenance, Bowel: level 3 or higher; must be incontinent
 - Contenance, Bladder: level 3 or higher; must be incontinent
 - Orientation: level 3 or higher (totally disoriented, comatose)
 - Transfer: level 3 or higher (one or two-person assistance in the home)
 - Walking: level 3 or higher (one or two-person assistance in the home).
 - Wheeling: level 3 or higher (must be Level 3 or 4 in 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:
 - suctioning
 - tracheostomy
 - ventilator
 - parenteral fluids
 - sterile dressings
 - irrigations
- #27: Individual is not capable of administering his/her own medications

DISCUSSION

To be medically eligible for the Medicaid ADW program, the Appellant must have deficits in five functioning areas. The preponderance of the evidence established that the Appellant had deficits in the functioning areas of *vacating a building*, *bathing*, *grooming*, and *dressings*. The Appellant argued that he should have received deficits in the functioning areas of *eating*, *transfer*, *walking*, *contenance*, and *medication administration*. The Respondent had to prove by a preponderance of the evidence that the Appellant did not have any deficits in the functioning areas of *eating*,

continence, transfer, walking, and administering medications.

The PAS reflects a discrepancy between the PAS submitted date — dated August 31, 2022 — and the Appellant's verbal signature and assessment completed date — dated August 15, 2022. Pursuant to the PAS, [REDACTED] received additional information from the Appellant on August 25 and August 31, 2022 that did not result in a subsequent approval of additional functioning deficit areas.

During the hearing, the Appellant provided testimony about barriers with bathing and vacating a building. The preponderance of the evidence verified that the Respondent had awarded the Appellant deficits in those functioning areas.

Eating

To be awarded a deficit in the area of *eating*, the Appellant must require physical assistance to get nourishment. During the PAS, the Appellant reported that he was able to cut food and use normal utensils. During the hearing, the Appellant testified that he rarely consumes food that needs to be cut but requires his father to cut meat occasionally. The preponderance of the evidence failed to establish that the Appellant requires physical assistance to get nourishment.

Continence

To be awarded a deficit in the area of *continence*, the Appellant had to be assessed as a level 3 - totally incontinent. During the PAS, the Appellant reported he had occasional bladder incontinence, was continent of bowel, and did not use incontinence supplies daily. During the hearing, the Appellant testified that he has daily "dribbles." The preponderance of the evidence failed to establish that the Appellant was incontinent at the time the PAS was completed.

Walking and Transferring

To be awarded a deficit in each of these areas, the Appellant had to be assessed as a level 3 or higher and require one-person assistance. During the PAS, the Appellant reported requiring the use of his surroundings — including table, chair, walls, door jams, and bathroom vanity — to transfer and walk. The PAS and the testimony provided during the hearing established that the Appellant's gait was unsteady at the time of the PAS. Further, the evidence established that the Appellant requires continuous oxygen.

During the hearing, the Respondent's representative argued that the Appellant had only reported requiring use of furniture and surroundings to walk. The Respondent's witness testified that she attempted to obtain supporting documentation from the Appellant's physician to demonstrate deficits in additional functioning areas and no information was obtained to support a deficit in the functional areas of *walking* and *transfer*.

The Appellant's witness's testimony reflected that at the time of the PAS, the Appellant required the same one-person assistance to walk in the home that the Appellant requires when vacating a building due to the Appellant's unsteady gait and use of continuous oxygen. The Respondent awarded the Appellant a deficit for vacating a building. No evidence was submitted to establish that the Appellant's witness was unreliable. The preponderance of the evidence submitted established that the Appellant requires physical assistance when walking due to his unsteady gait and use of continuous oxygen.

Medication Administration

To be awarded a deficit in this area, the Appellant had to be incapable of self-administering his medication. During the PAS, the Appellant reported he was capable of administering his own medications and was awarded a level 1 for *administering medications*. After receiving physician letters, the Respondent updated the Appellant's pass to reflect a level 2 - prompting/supervision for *medication administration*. The Appellant's physician's letters reflected that the Appellant has deficiencies administering medication; however, the letters did not provide any supporting clarification of what deficiencies the Appellant has. During the PAS, the Appellant reported he takes medications out of the bottles daily and is physically able to take his medications independently. No reliable evidence was submitted to establish that the Appellant is unable to administer his own medications; therefore, an additional deficit cannot be affirmed in this functioning area.

CONCLUSIONS OF LAW

- 1) To be medically eligible for the Medicaid ADW program, the Appellant had to have deficits in five functioning areas.
- 2) The preponderance of evidence demonstrated that the Appellant had deficits in the functioning areas of *vacating a building, bathing, grooming, dressing, and walking*.
- 3) The Respondent incorrectly denied the Appellant medical eligibility for the Aged and Disabled Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant medical eligibility for the Aged and Disabled Waiver Program.

ENTERED this 7th day of November 2022.

Tara B. Thompson, MLS
State Hearing Officer