

State of West Virginia DEPARTMENT OF HEALTH ANDHUMAN RESOURCES Office of Inspector General Board of Review P.O. Box 1247 Martinsburg, WV 25402

Earl Ray Tomblin Governor Karen L. Bowling Cabinet Secretary

June 16, 2015



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 Official 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,

Lori Woodward State Hearing Official Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS

### WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES BOARD OF REVIEW

Appellant,

v.

Action Number: 15-BOR-1711

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES,

**Respondent.** 

# DECISION OF STATE HEARING OFFICIAL

## **INTRODUCTION**

This is the decision of the State Hearing Official resulting from a fair hearing for **the state**. 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 11, 2015, on a timely appeal filed April 2, 2015.

The matter before the Hearing Official arises from the proposal of the Respondent to terminate the Appellant's Aged/Disabled Waiver Medicaid Program benefits.

At the hearing the Respondent appeared by Tamra Grueser, RN from the Bureau of Senior Services. Appearing as a witness for the Respondent was (Nurse RN from West Virginia Medical Institute (WVMI). The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were Caregiver with and All , RN with All

witnesses were sworn and the following documents were admitted into evidence.

### **Department's Exhibits**:

- D-1 West Virginia Medicaid Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5.1 and 501.5.1.1
- D-2 Pre-Admission Screening (PAS) form for ADW services, dated March 16, 2015
- D-3 Medical Necessity Evaluation Request form, dated February 12, 2015
- D-4 Notice of Potential Denial, April 7, 2015
- D-5 Notice of Decision, dated April 28, 2015

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 Official sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- On April 7, 2015, the Department issued notice (Exhibit D-4) to the Appellant, informing him of its proposed decision to terminate his Aged and Disabled Waiver (ADW) Program benefits. Based on the March 16, 2015, Pre-Admission Screening (PAS), it was determined he did not meet the medical eligibility criteria for the program because deficits were established in only three (3) functional areas: *vacating a building in the event of (or during) an emergency, eating and grooming*. (Exhibit D-4) Eligibility requires deficits be established in at least five (5) functional areas. (Exhibit D-1)
- 2) The Appellant believed he should have been awarded deficits in the areas of *bathing and dressing*.
- 3) Department's witness, Nurse evaluated Appellant during the 2015 PAS assessment (assessment). Upon her arrival at the Appellant's house, Nurse found the Appellant fully dressed without any assistance, as his caregiver arrived sometime after Nurse found the Appellant fully that although the caregiver was present during the assessment, she did not participate.
- 4) The Appellant told Nurse during his assessment that he was able to bathe and dress himself without the assistance of his caregiver. The Appellant was assessed as a Level 1, self/prompting in both of these functional areas. (Exhibit D-2)
- 5) On physical demonstration during the assessment, the Appellant was unable to touch his feet.

### APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual §501.5.1.1 (Exhibit D-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 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, not preparation)
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)

Continence (bowel, bladder) -- Level 3 or higher; must be incontinent
Orientation-- Level 3 or higher (totally disoriented, comatose)
Transfer----- Level 3 or higher (one-person or two-person assistance in the home)
Walking----- Level 3 or higher (one-person assistance in the home)
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

Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMI nurse determined, at the time of the PAS, that the Appellant had three qualifying deficits in the areas of *vacating, eating and grooming*. Appellant proposed additional deficits should have been awarded in the areas of bathing and dressing.

In order to be awarded a deficit for the functional areas of bathing and grooming, ADW policy requires an assessment of a Level 2, physical assistance. The evidence showed that the Appellant was unable to touch his feet and would be unable to wash them without assistance. He should have been awarded a deficit in the functional area of bathing. However, as the Appellant was able to dress himself before the caregiver arrived, a deficit cannot be established for the functional area of grooming.

As policy necessitates a finding of five functional deficits to be program eligible, the Appellant failed to establish that he should have been awarded an additional two deficits. The Department was correct in its finding of medical ineligibility.

### **CONCLUSIONS OF LAW**

Whereas the Appellant did not demonstrate a total of five (5) functional deficits on the March 2015 PAS assessment, Appellant did not establish medical eligibility for the Aged/Disabled Waiver Program, as defined in BMS Provider Manual §501.5.1.1.

# **DECISION**

It is the decision of the State Hearing Official to **UPHOLD** the Department's proposal to terminate the Appellant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

ENTERED this 16<sup>th</sup> day of June 2015.

Lori Woodward, State Hearing Official