



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN 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

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1711

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 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  
[REDACTED]



## FINDINGS OF FACT

- 1) 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 [REDACTED] evaluated Appellant during the 2015 PAS assessment (assessment). Upon her arrival at the Appellant's house, Nurse [REDACTED] found the Appellant fully dressed without any assistance, as his caregiver arrived sometime after Nurse [REDACTED]. It is noted that although the caregiver was present during the assessment, she did not participate.
- 4) The Appellant told Nurse [REDACTED] 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**