



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

July 8, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1957

Dear Mr. [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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau of Senior Services

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-1957**

**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 8, 2015, on an appeal filed April 28, 2015.

The matter before the Hearing Officer arises from the May 6, 2015, decision by the Respondent to terminate Aged and Disabled Waiver services for the Appellant.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau for Senior Services. Appearing as a witness for the Respondent was ██████████, RN with the West Virginia Medical Institute. The Appellant appeared *pro se*. Appearing as a witness for the Appellant were ██████████, the Appellant's daughter, ██████████, Homemaker RN and ██████████, Case Manager. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

D-1 Aged and Disabled Waiver Services Policy §§ 501.5.1 and 501.5.1.1

D-2 Pre-Admission Screening dated April 10, 2015

D-3 Medical Necessity Evaluation Request dated January 15, 2015

D-4 Notice of Decision: Final Termination dated May 6, 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 Officer sets forth the following Findings of Fact.

## **FINDINGS OF FACT**

- 1) On April 10, 2015, the Appellant was reevaluated to determine continuing medical eligibility for the Aged and Disabled Waiver program.
- 2) West Virginia Medical Institute (WVMI) Nurse [REDACTED] completed a Pre-Admission Screening (PAS) (D-2) with the Appellant to assess his functional abilities in the home.
- 3) The Respondent issued notice (D-4) to the Appellant of its decision to terminate Aged and Disabled Waiver services as a result of the determination that he did not meet the medical criteria for the program.
- 4) The Appellant was assessed as having functional deficits in the areas of vacating a building in an emergency and grooming. Five (5) deficits (D-1) must be established to qualify for services under the Aged and Disabled Waiver program.

## **APPLICABLE POLICY**

Aged/Disabled Home and Community-Based Services Waiver Policy Manual §501.3.2 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**

The Appellant and his witnesses claimed he has deficits in the areas of bathing, dressing, walking and orientation.

The testimony provided indicated that the Appellant does not receive physical assistance in the area of bathing, only that he is supervised during his showers in case he falls. A deficit cannot be awarded in this area as the Appellant was correctly assessed as requiring prompting/supervision in bathing.

The Appellant's daughter purported that the Appellant is unable to button his pants or put on socks and his homemaker completes these tasks for him. The Appellant denied needing physical assistance in dressing at the time of the assessment, therefore a deficit in this area cannot be established.

The Appellant walks with the aid of walls or furniture and was assessed as requiring supervision/assistive device to ambulate. No contradictory testimony regarding the Appellant's ability to ambulate was offered. Physical assistance from another individual is required to establish a deficit in walking.

The Appellant was oriented at the time of the assessment and during his testimony in the hearing. Memory loss is not considered in evaluating an individual's orientation.

### **CONCLUSIONS OF LAW**

Whereas the Appellant demonstrated only two (2) deficits at the time of the medical assessment completed in April 2015, he no longer meets the medical criteria to continue receiving services under the Aged and Disabled Waiver program.

**DECISION**

It is the decision of the State Hearing Officer to **uphold** the Respondent's termination of services under the Aged and Disabled Waiver program for the Appellant.

**ENTERED this 8<sup>th</sup> day of July 2015**

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**Kristi Logan  
State Hearing Officer**