



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

July 22, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2194

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Tamra R. Grueser, RN, WV Bureau of Senior Services

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

██████████,

Appellant,

v.

ACTION NO.: 15-BOR-2194

**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 21, 2015, on an appeal filed June 2, 2015.

The matter before the Hearing Officer arises from the April 28, 2015 decision by the Respondent to deny the Appellant's medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, of the WV Medical Institute (WVMI). The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy Manual, §§501.5.1 and 501.5.1.1
- D-2 Pre-Admission Screening (PAS) conducted on April 5, 2015
- D-3 PAS Summary dated April 6, 2015
- D-4 Verification of medical conditions and/or symptoms letter from Appellant's physician, ██████████, MD, dated April 6, 2015
- D-5 Medical Necessity Evaluation Request dated March 10, 2015
- D-6 Notice of Potential Denial dated April 8, 2015
- D-7 Notice of Decision dated April 28, 2015

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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) The Appellant applied for Title XIX Aged and Disabled Waiver (ADW) Program. Pursuant to his application, the Department's witness, a nurse from WVMI, conducted a Pre-Admission Screening (PAS) with him in his home on April 5, 2015 (Exhibit D-2).
- 2) As a result of the PAS, the Department assessed the Appellant with four deficits, for eating, bathing, dressing and grooming. Since the ADW Program requires five deficits to establish medical eligibility, the Department sent to the Appellant a Notice of Potential Denial letter (Exhibit D-6) on April 8, 2015, giving him two weeks to provide additional information regarding his medical conditions.
- 3) On April 28, 2015, the Department sent to the Appellant a Notice of Decision (Exhibit D-7), informing him that the Department denied his application for the ADW Program. The Appellant requested a fair hearing to protest this denial.
- 4) The Appellant argued he should have received additional deficits for vacating a building in the event of an emergency, continence, orientation, transferring, walking, wheeling, skilled needs and administering his medications.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual §501.5.1.1 (Exhibit D-1) sets forth the criteria for establishing medical eligibility for the ADW Program. 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 received four deficits on his April 5, 2015, PAS (Exhibit D-2). The Appellant argued he should have received eight additional deficits, for vacating a building in the event of an emergency, continence, orientation, transferring, walking, wheeling, skilled needs and administering his medications.

The Department was correct in not assessing the Appellant with an additional deficit for vacating a building in the event of an emergency. The assessing nurse documented that the Appellant told her he could exit his home during an emergency, and that she observed him standing and walking only with his cane to support him. The nurse correctly assessed the Appellant as being able to vacate independently.

The Department was correct in not assessing the Appellant with additional deficits for transferring, walking, or wheeling. As stated above, the assessing nurse observed the Appellant move from a seated to a standing position and walk using his cane, which meets the definition of Level 2, assistive device. In order to receive deficits for transferring and/or walking, the nurse would have to document that he required one-person assistance at all times in these areas. ADW Program policy dictates that a person must be assessed as walking at Level 3 or higher in order to receive a deficit for wheeling.

The Department was correct in not assessing the Appellant with an additional deficit for orientation. The April 2015 PAS (Exhibit D-2) indicates the Appellant was oriented to person, place and time.

The Department was correct in not assessing the Appellant with an additional deficit for skilled needs. In order to receive a deficit for this area of the PAS, he would have to document he had a tracheostomy, he was on a ventilator, or he required regular suctioning, parenteral fluids, sterile dressings or irrigations. He testified that he required none of these.

The Department was correct in not assessing the Appellant with an additional deficit for administering medications. Although he testified that he required his caregiver to place his

medications in a weekly medication planning box and give them to him, he provided no testimony or documentation to indicate he could not place the medications in his mouth and swallow them.

The Department should have assessed the Appellant with an additional deficit for continence. The April 2015 PAS (Exhibit D-2) reads as follows regarding this functional ability: “Bladder: States he has dribbling of his bladder at times – states he has had a couple of [text unavailable] his bladder. Bowel: He has incontinence of his bowels – states it is not daily – states the last time [text unavailable] ago.” The [text unavailable] portions of the above quote reflect right-margin sections of those statements that failed to print on the PAS document. Because those parts of the PAS text were omitted, the Appellant’s bowel accident frequency was not documented. The Appellant testified that he had bowel accidents four to five times per week. His witness, his primary caregiver, confirmed this testimony.

CONCLUSION OF LAW

The Department assessed the Appellant with four deficits on his April 2015 PAS. Policy found in BMS Provider Manual §501.5.1.1 indicates a member must demonstrate five deficits in order to meet medical eligibility for the ADW Program. Documentation and testimony support the Appellant’s position that he should have received an additional deficit for continence, therefore he meets medical eligibility for the program.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Department’s proposal to deny the Appellant’s medical eligibility for benefits and services through the Aged and Disabled Waiver Medicaid Program.

ENTERED this 22nd Day of July 2015.

**Stephen M. Baisden
State Hearing Officer**