



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

October 2, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2788

Dear Ms. [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-2788

**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 October 1, 2015, on an appeal filed August 3, 2015.

The matter before the Hearing Officer arises from the July 24, 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 APS Healthcare. The Appellant appeared *pro se*. 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 July 6, 2015
- D-3 Aged and Disabled Waiver Program Medical Necessity Evaluation Request, dated May 26, 2015
- D-4 Notice of Potential Denial dated July 9, 2015
- D-5 Notice of Decision: Final Denial dated July 24, 2015

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 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 her application, a nurse from the WV Medical Institute conducted a Pre-Admission Screening (PAS) with her in her home on July 6, 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 (Exhibit D-4) on July 9, 2015, giving her two weeks to provide additional information regarding her medical conditions.
- 3) On July 24, 2015, the Department sent to the Appellant a Notice of Decision: Final Denial (Exhibit D-6), informing her that the Department denied her application for the ADW Program. The Appellant requested a fair hearing to protest this denial.
- 4) The Appellant argued she should have received additional deficits for vacating a building in the event of an emergency, walking and administering her 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 her July 6, 2015, PAS (Exhibit D-2). The Appellant argued she should have received additional deficits for vacating a building in the event of an emergency, walking and administering her medications.

The Appellant testified she would not be able to vacate her home in the event of an emergency. She cited a recent incident wherein food on the stove in her kitchen burned and smoke filled her home. She testified that her grandchildren had to take her by the hand in order to lead her out of the house when this happened. The July 2015 PAS reads as follows regarding vacating: "During the visit, [the Appellant] was able to walk out to her vehicle to get her purse. No one assisted her in/out of the home . . ." The PAS indicates the assessing nurse rated her as requiring supervision with vacating, which does not meet the policy criterion for a deficit.

The Appellant testified regarding her walking that she has lupus, arthritis and rheumatism. She testified that these health conditions negatively affected her ability to walk. She stated that on the day of the PAS, she stood up and walked around the room once or twice, but sometimes she needed a cane to help her do this. As stated above, the assessing nurse observed the Appellant walk out of her home and retrieve something from her car without assistance. This meets the definition of walking at Level 1, independently. ADW Program policy dictates that a person must be assessed as walking at Level 3 or higher (one-person assistance with walking at all times) in order to receive a deficit in this area of the PAS.

The Appellant testified that she tries to take her medications out of the pill bottles, but sometimes someone has to help her do this. She testified that she suffers from anxiety and depression, and these conditions affect her memory. The July 2015 PAS reads as follows regarding her ability to administer her medications: "[Appellant] has a planner, but does not use it. Says that she gets the medications out of the bottles herself. She can place them in her mouth. Says that she does forget to take the medications at times. Her [daughter] will remind her to take them. Assessed as requiring prompting/supervision with medications."

The Appellant did not provide testimony or evidence to support her contention that she should have received deficits for the areas of vacating a building during an emergency, walking or administering medications. The Department was correct not to assess her with deficits in any of these three areas of the July 2015 PAS.

CONCLUSION OF LAW

The Department assessed the Appellant with four deficits on her July 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 do not support the Appellant's position that she should have received additional deficits for vacating a building during an emergency, walking or administering medications, therefore she does not meet the medical eligibility criteria for the ADW Program.

DECISION

It is the decision of the State Hearing Officer to UPHOLD 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 2nd Day of October 2015.

**Stephen M. Baisden
State Hearing Officer**