



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin  
Governor

BOARD OF REVIEW  
9083 Middletown Mall  
White Hall, WV 26554

Karen L. Bowling  
Cabinet Secretary

January 15, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 14-BOR-3687

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,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

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

cc: Tammy Grueser, RN, BoSS

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

██████████,

**Claimant,**

v.

**Action Number: 14-BOR-3687**

**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 January 13, 2015, on an appeal filed November 17, 2014.

The matter before the Hearing Officer arises from the November 5, 2014 decision by the Respondent to terminate Claimant's benefits and services provided through the Medicaid Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services (BoSS). Appearing as a witness for the Respondent was ██████████, RN, West Virginia Medical Institute (WVMI). The Claimant appeared pro se. Appearing as a witness for the Claimant was ██████████, RN, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual (Aged & Disabled Waiver) §501.5.1
- D-2 Pre-Admission Screening (PAS) completed on 10/16/14
- D-3 PAS Summary dated 10/20/14
- D-4 Medical Necessity Evaluation Request dated 7/3/14
- D-5 Pre-Admission Screening completed on 5/21/12
- D-6 Medical Necessity Evaluation Request dated 4/19/12
- D-7 Potential Termination Notice dated 10/20/14
- D-8 Notice of Decision: Final Termination dated 11/5/14

**Claimant's Exhibits:**

- C-1 Claimant's Plans of Care (POC) for the period of 5/20/14 – 11/30/14 and the period of 12/2014 – 5/2015

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 October 16, 2014, Claimant was evaluated to determine medical eligibility for continued participation in the Aged/Disabled Waiver (ADW) Program. West Virginia Medical Institute (WVMI) Registered Nurse [REDACTED] completed the Pre-Admission Screening (PAS) form (D-2) with the Claimant, identifying four (4) functional deficits – vacating a building, bathing, dressing and grooming.
- 2) On or about November 5, 2014, Respondent issued notice (D-8) to Claimant of its decision to terminate ADW Program benefits as a result of the determination that she did not meet medical criteria for the program. As a matter of record, Respondent stipulated that the Claimant demonstrated four (4) functional deficits at the time of the assessment - vacating a building, bathing, dressing and grooming. However, because a minimum of five (5) deficits must be identified, medical eligibility could not be established.
- 3) The Claimant and her witness contended that a deficit should have been awarded in the functional area of bladder incontinence. The Claimant testified during the hearing that she has episodes of bladder incontinence daily.
- 4) The Claimant was identified as having occasional urinary incontinence (Level 2) at the time of the assessment, as she reported bladder accidents less than three (3) times a week to RN [REDACTED]. However, [REDACTED], RN, [REDACTED], testified that the Claimant is incontinent of bladder and that her Plan of Care (C-1) has included services directed toward this functional deficit for the last year. RN [REDACTED] further noted that the Claimant has intermittent disorientation and the Claimant may have reported inaccurate information.

**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

Regulations that govern the Medicaid Aged and Disabled Waiver Program stipulate that an individual must be incontinent of bladder three (3) or more times per week to qualify for a functional deficit. Information received at the hearing reveals that while the Claimant reported she was occasionally incontinent during her medical assessment, she likely reported inaccurate information due to her intermittent disorientation. Credible testimony proffered by Nurse [REDACTED] indicating the Claimant suffers from bladder incontinence daily is supported by the Claimant's previous, and current, Plan of Care.

## **CONCLUSIONS OF LAW**

The Claimant demonstrated four (4) functional deficits (vacating, bathing, grooming and dressing) on the date of the assessment and – as a result of information provided during the hearing – one (1) additional deficit is identified in the functional area of (bladder) incontinence. Whereas five (5) deficits have been identified, medical eligibility for the Aged/Disabled Waiver Program is established.

## **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Department's decision to terminate the Claimant's benefits and services provided through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

**ENTERED this \_\_\_\_ Day of January 2015.**

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**Thomas E. Arnett  
State Hearing Officer**