



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

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Cabinet Secretary

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State Capitol Complex  
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M. Katherine Lawson  
Inspector General

January 30, 2018



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-2852

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra Grueser, Department Representative  
[REDACTED], Appellant's Representative

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW

████████████████████,

Appellant,

v.

Action Number: 17-BOR-2852

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 11, 2018, on an appeal filed November 2, 2017.

The matter before the Hearing Officer arises from the October 30, 2017 decision by the Respondent to terminate the Appellant's participation in the Aged and Disabled Waiver (ADW) Program based on unmet medical eligibility.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as a witness for the Department was ██████████. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

**Department's Exhibits:**

- D-1            BMS Provider Manual (excerpt)  
                 Chapter 501 Aged and Disabled Waiver (ADW)  
                 §501.9
- D-2            Aged and Disabled Waiver Pre-Admission Screening (PAS) forms  
                 Date of Assessment: August 30, 2017
- D-3            Notices from the Department to the Appellant  
                 Notice of Decision: Final Termination, dated October 30, 2017  
                 Notice of Potential Termination, dated September 11, 2017

D-4 Documents regarding 2016 eligibility  
PAS from September 14, 2016 assessment  
Notice of Decision, dated September 15, 2016

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 was a recipient of Aged and Disabled Waiver (ADW) services.
- 2) An assessment of the Appellant's continuing need for ADW services was conducted on August 30, 2017. (Exhibit D-2)
- 3) By notice dated September 11, 2017, the Appellant advised the Respondent of a "potential termination" of ADW services due to unmet medical eligibility, and provided a two-week deadline for submitting additional medical information for consideration. (Exhibit D-3)
- 4) By notice dated October 30, 2017, the Appellant advised the Respondent that ADW services would be terminated due to unmet medical eligibility – specifically, that the Appellant established deficiencies or "deficits" in three areas of care, as opposed to the minimum of five set by policy. (Exhibit D-3)
- 5) The three deficits awarded to the Appellant were in the medical care areas of dressing, continence, and vacating a building in the event of an emergency. (Exhibit D-3)
- 6) The Appellant proposed additional deficits in the medical care areas of bathing, grooming, and transferring.
- 7) [REDACTED], a registered nurse assigned by the Respondent to complete the August 2017 assessment of the Appellant, recorded his assessment findings on a Pre-Admission Screening (PAS) form. (Exhibit D-2)
- 8) The PAS noted the Appellant was found to be independent in the care area of bathing. (Exhibit D-2)
- 9) Regarding the area of bathing, comments recorded on the August 2017 PAS note the Appellant could transfer in and out of a shower or tub, denied the need for physical assistance with bathing, and "can now independently perform bathing..." (Exhibit D-2)
- 10) The PAS noted the Appellant was found to be independent in the care area of grooming. (Exhibit D-2)

- 11) Regarding the area of grooming, comments recorded on the August 2017 PAS note the Appellant could independently perform hair care, nail care, and oral care, but for skin care the Appellant reported she "...needs application of lotion to her back." (Exhibit D-2)
- 12) The PAS noted the Appellant was found to require supervision and/or an assistive device in the care area of transferring. (Exhibit D-2)
- 13) Regarding the area of transferring, comments recorded on the August 2017 PAS note the Appellant reported "...the ability to transfer without hands on assistance at this time from the bed, toilet, and furniture used inside the home." (Exhibit D-2)

### **APPLICABLE POLICY**

The Bureau for Medical Services Provider Manual, Chapter 501: Aged and Disabled Waiver (ADW), §501.9.1, sets the medical eligibility criteria for the program as follows:

#### **501.9.1 Medical Criteria**

An individual must have five deficits as described on the Pre-Admission Screening Form (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

| <b>Section</b> | <b>Description of Deficits</b>   |   |
|----------------|--|---|
| #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   |   |
| a.             | Eating   | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b.             | Bathing  | Level 2 or higher (physical assistance or more)                             |
| c.             | Dressing   | Level 2 or higher (physical assistance or more)                             |
| d.             | Grooming   | Level 2 or higher (physical assistance or more)                             |
| e.             | Continence, bowel  | Level 3 or higher; must be incontinent.                                     |
| f.             | Continence, bladder  |   |
| g.             | Orientation  | Level 3 or higher (totally disoriented, comatose).                          |
| h.             | Transfer   | Level 3 or higher (one-person or two-person assistance in the home)         |
| i.             | Walking  | Level 3 or higher (one-person assistance in the home)                       |
| j.             | 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 for 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 has appealed the Respondent’s decision to terminate her participation in the Aged and Disabled Waiver (ADW) Program based on insufficient deficits to establish medical eligibility. The Respondent must show by preponderance of the evidence that the Appellant did not have the five (5) deficits required to continue ADW medical eligibility.

Medical eligibility for the ADW Program is assessed by a nurse for the Respondent, whose findings are recorded on a PAS. The PAS also includes comments intended to support these findings. The PAS for the Appellant indicates she has deficits in three (3) critical care areas established by the Respondent. In the hearing, the Appellant proposed deficits in three (3) additional areas – bathing, grooming, and transferring.

The PAS comments affirm the Respondent’s conclusion in each of these areas. Testimony regarding the Appellant failed to establish the functional levels necessary for deficits in the areas of bathing, grooming, and transferring.

The Appellant’s representative testified the Appellant is sometimes weak or scared to get in and out of the tub or shower. This testimony did not indicate the Appellant requires physical assistance in the area of bathing, and physical assistance is the standard established by policy for a deficit in this area.

Testimony also failed to establish a need for physical assistance in the area of grooming. The Appellant’s representative testified the Appellant ‘can do most tasks’ in this area, echoing the findings of the assessing nurse on the PAS. Because the Appellant is independent with most tasks in this area, she was correctly assessed as independent in grooming as a whole.

The Appellant was assessed as requiring supervision and/or an assistive device for transferring. There was no testimony or evidence to support a finding that the Appellant requires one- or two-person assistance with transferring – the standard for a deficit in this area.

The Respondent correctly assessed the Appellant with deficits in three of the areas of care set by ADW policy. Because this policy requires a minimum of five deficits to establish ADW medical eligibility, the Respondent’s decision to terminate the Appellant’s participation in the ADW program is correct.

**CONCLUSION OF LAW**

Because the Appellant failed to establish the minimum of five deficits in critical care areas required by ADW policy for medical eligibility, the Respondent must terminate the Appellant's participation in the ADW program.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's participation in the ADW Program.

**ENTERED this \_\_\_\_ Day of January 2018.**

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**Todd Thornton  
State Hearing Officer**