



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

April 10, 2020



RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1303

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Bureau for Senior Services

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

██████████,

Appellant,

v.

Action Number: 20-BOR-1303

**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 April 7, 2020, on an appeal filed February 24, 2020.

The matter before the Hearing Officer arises from the February 5, 2020, decision by the Respondent to terminate the Appellant's services under the Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau for Senior Services. Appearing as a witness for the Respondent was Rebecca Monroe, RN with KEPRO. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §501.9
- D-2 Pre-Admission Screening Form dated January 15, 2020 and Medication List
- D-3 Notice of Potential Termination and Request for Additional Information dated January 17, 2020
- D-4 Medical Necessity Evaluation Request dated November 22, 2019
- D-5 Notice of Potential Termination dated January 17, 2020 and Notice of Final Decision – Termination dated February 5, 2020
- D-6 Pre-Admission Screening Form dated January 27, 2019 and Medication List
- D-7 Medical Necessity Evaluation Request dated December 4, 2018

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 was reevaluated for medical eligibility for services under the Aged and Disabled Waiver Program.
- 2) A Pre-Admission Screening (PAS) form was completed for the Appellant on January 15, 2020 to determine her functional abilities in the home (Exhibit D-2).
- 3) The Appellant was awarded deficits in the areas of bathing, dressing and grooming as a result of the January 2020 medical assessment (Exhibits D-2 and D-5).
- 4) Five deficits are required to meet the medical eligibility criteria for Aged and Disabled Waiver services (Exhibit D-1).
- 5) The Respondent issued a Notice of Decision on February 5, 2020 advising the Appellant that her services under the Aged and Disabled Waiver Program would be terminated (Exhibit D-5).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §501.9.1 states an individual must have five deficits as described on the PAS to qualify medically for the Aged and Disabled Waiver (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 Function Abilities 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 - Level 3 or higher, must be incontinent
- 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 in walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside of 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

Pursuant to policy, an individual must have a minimum of five (5) deficits as derived from the PAS assessment tool to qualify medically for Aged and Disabled Waiver services. The Appellant received three (3) deficits on the January 2020 PAS as a result of an annual medical evaluation.

The Appellant contested not receiving deficits in the areas of vacating a building in an emergency, transferring and walking.

Vacating

The Appellant was rated as a Level 2 - with supervision - in the area of vacating a building in an emergency. The January 2020 PAS documented that the Appellant required supervision in vacating due to back and bilateral knee pain. The Appellant testified that she has difficulty walking for extended periods of time and moves slowly. The Appellant contended that she would be unable to vacate in an emergency quickly due to having to navigate stairs in her home.

Walking

The Appellant was rated as a Level 2 - supervised/assistive device – in the area of walking. The January 2020 PAS documented that the Appellant denied the need for physical assistance from another person to walk but reported that she held onto furniture at times. The assessing nurse, Rebecca Monroe, testified that during the medical assessment, she observed the Appellant walk around her apartment independently on several occasions with a steady gait.

Transferring

The Appellant was rated as a Level 2 - supervised/assistive device - in the area of transferring. The January 2020 PAS documented that the Appellant denied the need for physical assistance from another person but reported that she used furniture or surroundings at times to transfer. Nurse Monroe testified that she observed the Appellant rise from a sitting a position several times without the aid of furniture or an assistive device.

The Appellant testified that the only change in her circumstances from the previous year's assessment is that she now has a baby and that her disabilities have not changed. The Appellant stated that she has no choice but to struggle through her physical pain when walking and transferring in order to care for her baby. The Appellant purported that she tires easily and requires frequent rest periods and uses the support of her personal attendant on the days the attendant is

scheduled at her home. The Appellant contended that her personal attendant was not present during the medical assessment and she had no choice but to walk and transfer without the aid her surroundings while holding her baby.

The previous year's medical evaluation in January 2019 resulted in deficits in vacating a building in an emergency, eating, bathing, dressing, grooming and walking (Exhibit D-6). The Appellant was assessed as a Level 2 in transferring in 2019 based on her report that she did not require physical assistance. The Appellant was assessed as a Level 3 in the area of walking based upon the Appellant's report that she required physical assistance from another person to ambulate, a history of frequent falls and leg weakness. The Appellant provided no testimony regarding the area of eating, in which she received a deficit previously.

The Appellant argued that there had been no change in her condition to warrant the loss of her Aged and Disabled Waiver services. The Appellant denied the need for physical assistance to walk in January 2020 and was observed to walk independently. While the Appellant contended that walking independently is painful and she requires frequent rest periods, she has the ability to walk without the aid of another person and was correctly assessed as a Level 2 in this area. Likewise, the Appellant denied the need of physical assistance to transfer and was observed to transfer independently during the assessment. The Appellant was correctly assessed as a Level 2 in transferring. The Appellant's testimony that she could not vacate a building in the event of an emergency due to ambulating slowly is credible and a deficit in this area will be awarded.

Whereas the Appellant is found to be exhibiting deficits in the areas of vacating a building in an emergency, bathing, dressing and grooming, and a fifth deficit was not established, she no longer meets the medical criteria to continue receiving services under the Aged and Disabled Waiver Program.

CONCLUSIONS OF LAW

- 1) Policy stipulates that an individual must demonstrate five deficits as derived from the PAS assessment to qualify medically for services under the Aged and Disabled Waiver Program.
- 2) The Appellant received three deficits from the January 2020 medical evaluation.
- 3) Based on the testimony provided, an additional deficit in the area of vacating in an emergency was established.
- 4) The evidence and testimony did not support the presence of deficits in the areas of transferring and walking.
- 5) The Appellant no longer meets the medical eligibility 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 decision of the Respondent to terminate the Appellant's services under the Aged and Disabled Waiver Program.

ENTERED this 10th day of April 2020.

**Kristi Logan
State Hearing Officer**