



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector
General

July 8, 2020



RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-1720

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Tamra Grueser, Bureau of Senior Services

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

██████████ ██████████,

Appellant,

v.

ACTION NO.: 20-BOR-1720

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on July 2, 2020 an appeal filed June 3, 2020.

The matter before the Hearing Officer arises from the April 13, 2020 determination by the Respondent to deny the Appellant medical eligibility for the Medicaid Aged and Disabled Waiver Program (ADW).

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as witness on behalf of the Respondent was Debra Lemasters, RN, KEPRO. The Appellant appeared and was represented by ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau of Medical Services (BMS) Manual § 501.9.1
- D-2 ADW Medical Necessity Evaluation Request, signed January 10, 2020
- D-3 KEPRO Notice of Decision: Final Decision, Dated April 13, 2020
- D-4 Pre-Admission Screening (PAS), submitted March 27, 2020

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) On March 27, 2020 the Appellant completed a PAS by telephone to assess his medical eligibility for the Medicaid ADW program (Exhibit D-4).
- 2) The Appellant's representative, [REDACTED], participated in the March 27, 2020 PAS (Exhibit D-4).
- 3) On April 13, 2020, the Respondent issued a notice advising the Appellant that he was medically ineligible for the Medicaid ADW program due to lacking deficits in at least five of the 13 critical areas (Exhibit D-3).
- 4) The Appellant was awarded a deficit in the area of *vacating a building* (Exhibit D-3).
- 5) The Appellant is diagnosed with Congenital Hydrocephalus and Other Amnesia (Exhibit D-2).
- 6) At the time of the PAS, the Appellant did not have a decubitus (Exhibit D-4).
- 7) At the time of the PAS, the Appellant did not require physical assistance to get nourishment (Exhibit D-4).
- 8) At the time of the PAS, the Appellant required prompting to complete bathing but did not require physical assistance to complete the task of bathing (Exhibit D-4).
- 9) At the time of the PAS, the Appellant required prompting to complete grooming but did not require physical assistance to complete grooming tasks, oral care, or nail care (Exhibit D-4).
- 10) At the time of the PAS, the appellant required assistance choosing weather appropriate clothing and required prompting to change his clothing, but did not require physical assistance dressing his upper and lower body, securing fasteners, or putting on socks and shoes (Exhibit D-4).
- 11) At the time of the PAS, the Appellant was continent and did not require physical assistance with toileting or require incontinence supplies (Exhibit D-4).
- 12) At the time of the PAS, the Appellant was intermittently disoriented (Exhibit D-4).
- 13) At the time of the PAS, the Appellant was physically able to independently transfer and walk (Exhibit D-4).

- 14) At the time of the PAS, the Appellant did not require use of a wheelchair in the home (Exhibit D-4).
- 15) At the time of the PAS, the Appellant did not have any skilled needs (Exhibit D-4).
- 16) At the time of the PAS, the Appellant required assistance reading medication bottles and preparing his medication but was physically capable of taking the medications independently (Exhibit D-4).

APPLICABLE POLICY

ADW Manual §501.6 ADW Program Eligibility provides in part:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program: ...

D. Be approved as medically eligible for nursing home level of care and in need of services...

ADW Manual §501.9.1 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 Decubitis; 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 Functioning 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), f) Continence (bowel, 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 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 her own medications

DISCUSSION

Pursuant to policy, Applicants for the ADW program must meet all given criteria to be eligible for the program. These criteria include being approved as medically eligible for nursing home level of care and in need of services. KEPRO is the Utilization Management Contractor (UCM) responsible for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services. Per policy, an individual must have five (5) deficits on the PAS to qualify medically for the ADW Program. Pursuant to the PAS, the Appellant was only found to have one deficit. Therefore, the Respondent determined that he was ineligible for the ADW program. The Appellant's representative argued that the Appellant should have been awarded deficits in all areas of functioning. The Respondent had to prove by a preponderance of evidence that the Appellant did not present with at least five deficits at the time of the PAS.

Decubitus:

To receive a deficit in the area of *decubitus*, the Appellant had to have a decubitus at the time the PAS was completed. No evidence was entered to establish that the Appellant had a decubitus at the time of the PAS. As the Appellant did not have a decubitus at the time of the PAS, a deficit could not be awarded in the area of *decubitus*.

Eating:

To receive a deficit in the area of *eating*, the Appellant had to be assessed as Level 2 or higher and require physical assistance to get nourishment at the time the PAS was completed. The evidence established that the Appellant did not require physical assistance to get nourishment. The evidence reflected that the Appellant had the physical ability to cut food, could feed himself with normal utensils, and did not require the use of adaptive equipment. No evidence was entered to verify that the Appellant required physical assistance to get nourishment at the time of the PAS. As the Appellant did not require physical assistance to get nourishment at the time of the PAS, a deficit could not be awarded in the area of *eating*.

Bathing:

To receive a deficit in the area of *bathing*, the Appellant had to be assessed as Level 2 or higher and require physical assistance in the area of bathing. The evidence established that the Appellant requires prompting to complete bathing but can physically complete bathing independently. Policy provides that individuals that require prompting but are able complete bathing independently are assessed as Level 1. As the Appellant was assessed as a Level 1 and did not meet the policy requirement of being assessed as Level 2 or higher and requiring physical assistance to complete bathing, a deficit could not be awarded in the area of *bathing*.

Grooming:

To receive a deficit in the area of *grooming*, the Appellant had to be assessed as a Level 2 or higher and require physical assistance in the area of grooming. The evidence established that the Appellant required prompting but was physically capable of completing grooming tasks, oral care, and trimming his nails and toenails without physical assistance. Policy provides that individuals that require prompting but are able to complete grooming independently are assessed as a Level 1. As the Appellant was assessed as a Level 1 and no evidence was entered to establish that he required physical assistance to complete grooming, a deficit could not be awarded in the area of *grooming*.

Dressing:

To receive a deficit in the area of *dressing*, the Appellant had to be assessed as a Level 2 or higher and require physical assistance in the area of dressing. The evidence established that the Appellant required assistance choosing weather appropriate clothing and required prompting to change his clothing, however no evidence was entered to establish that the Appellant required physical assistance dressing his upper and lower body, securing fasteners, or putting on socks and shoes. As the Appellant was assessed as a Level 1 and no evidence was entered to establish that he required physical assistance to complete dressing, a deficit could not be awarded in the area of *dressing*.

Continence:

The Appellant's representative argued that the Appellant's continence functioning has declined since the time of the PAS; however, this Hearing Officer can only consider the Appellant's functioning at the time of the PAS to determine whether the Respondent correctly assessed his functioning abilities at the time of the PAS. Therefore, testimony regarding changes to the Appellant's continence functioning since the time of the PAS was not considered in the decision of this Hearing Officer.

To receive a deficit in the area of *continence*, the Appellant had to be assessed as a Level 3 or higher and be totally incontinent. The evidence established that at the time of the PAS, the Appellant was assessed as Level 1, continent, and did not require physical assistance with toileting or require incontinence supplies. As the Appellant was assessed as a Level 1 and no evidence was entered to establish that he was incontinent at the time of the PAS, a deficit could not be awarded in the area of *continence*.

Orientation:

The Appellant's representative argued that the Appellant's orientation has declined since the time of the PAS and that he requires 24-hour supervision to ensure that he does not wander off and lose his way home; however, this Hearing Officer can only consider the Appellant's functioning at the time of the PAS to determine whether the Respondent correctly assessed his functioning abilities at the time the PAS was completed. Therefore, testimony regarding changes to the Appellant's orientation since the time of the PAS was not considered in the decision of this Hearing Officer.

To receive a deficit in the area of *orientation*, the Appellant had to be assessed as a Level 3 and be totally disoriented or comatose. The evidence established that at the time of the PAS, the Appellant was assessed as Level 2 and presented with intermittent disorientation. During the hearing, the

Appellant's representative testified that there are times when the Appellant is lucid and times when he is disoriented. This testimony is consistent with the Respondent's assessment of intermittent disorientation. As no evidence was entered to establish that the Appellant was totally disoriented or comatose at the time of the PAS, a deficit could not be awarded in the area of *orientation*.

Transfer and Walking:

To be awarded a deficit in the areas of *transfer* and *walking*, the Appellant had to be assessed as Level 3 or higher in those areas and require one or two-person assistance in the home. The evidence established that the Appellant was assessed as Level 1 and was physically able to independently transfer and walk. As no evidence was entered to verify that the Appellant required physical assistance when transferring or walking, a deficit could not be awarded in the areas of *transfer* or *walking*.

Wheeling:

To be awarded a deficit in the area of *wheeling*, the Appellant had to be assessed as Level 3 or higher and must be Level 3 or 4 on walking. The evidence established that at the time of the PAS, the Appellant did not require use of a wheelchair. No evidence was entered to verify that the Appellant required use of a wheelchair at the time of the PAS. Therefore, a deficit in the area of *wheeling* could not be awarded.

Skilled Needs:

To be awarded a deficit in the area of *skilled needs*, the Appellant had to have skilled needs in one or more areas of suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations. As no evidence was entered to establish that the Appellant had any skilled needs at the time of the PAS, a deficit in the area of *skilled needs* could not be awarded.

Administering Medications:

To be awarded a deficit in the area of *administering medications*, the Appellant had to be assessed as being physically incapable of administering his own medications. At the time of the PAS, the Appellant required assistance reading the medication bottles and preparing his medication but was physically capable of taking medications independently. As no evidence was entered to establish that the Appellant was physically incapable of administering his own medications, a deficit could not be awarded in the area of *administering medications*.

CONCLUSIONS OF LAW

- 1) Policy requires that an applicant have five (5) functional deficits on the Pre-Admission Screening (PAS) to qualify medically for the ADW Program.
- 2) The preponderance of evidence verified that the Appellant did not demonstrate five (5) functional deficits on the PAS.
- 3) The Respondent correctly denied the Appellant medical eligibility for the ADW program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid Aged and Disabled Waiver Program.

ENTERED this 8th day of July 2020.

Tara B. Thompson
State Hearing Officer