



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

Bill J. Crouch
Cabinet Secretary

Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326
Tara.B.Thompson@wv.gov

Jolynn Marra
Interim Inspector
General

September 4, 2020



RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-1903

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 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-1903

**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 September 2, 2020 an appeal filed July 22, 2020.

The matter before the Hearing Officer arises from the June 23, 2020 determination by the Respondent to deny the Appellant medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Debbie Sickles, RN, KEPRO. The Appellant appeared and was represented by ██████████, ██████████ Medical Social Worker, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual § 501.9.1
- D-2 Medical Necessity Evaluation Request (MNER), signed by the physician on February 28, 2020
- D-3 KEPRO Pre-Admission Screening (PAS), submitted on June 5, 2020
- D-4 PAS Summary, dated June 5, 2020
- D-5 KEPRO Notice of Decision, dated June 23, 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 February 28, 2020, the Appellant's physician, Dr. [REDACTED], signed a Medical Necessity Evaluation Request (MNER) (Exhibit D-2).
- 2) On the MNER, Dr. [REDACTED] indicated the Appellant had diagnoses of Lung Mass, Alzheimer's, and listed the corresponding ICD-10 Codes (Exhibit D-2).
- 3) The MNER named the Appellant's brother, [REDACTED], as the Appellant's contact person and provided his mailing address and telephone number (Exhibit D-2).
- 4) On June 5, 2020, KEPRO RN, Debbie Sickles (Nurse Sickles), completed a Pre-Admission Screening (PAS) with the Appellant by telephone (Exhibit D-3).
- 5) The Appellant and Nurse Sickles were the only parties present during the completion of the PAS (Exhibit D-3).
- 6) The Respondent relied on the June 5, 2020 PAS to determine the Appellant's medical eligibility for the ADW program.
- 7) On June 23, 2020, KEPRO issued a notice advising the Appellant that she was found to be ineligible for the ADW program due to lacking deficits in at least five (5) of 13 critical areas (Exhibit D-5).
- 8) Based on the June 5, 2020 PAS, the Appellant was found to have functioning deficits in the areas of *vacate a building, bathing, grooming, and dressing* (Exhibit D-5).

APPLICABLE POLICY

Bureau for Medical Services Manual (BMS) § 501.6 Aged and Disabled Waiver (ADW) Program Eligibility provides in part:

To be eligible for the ADW program, applicants for the ADW program must be approved as medically eligible for nursing home level of care and in need of services.

BMS Manual § 501.9 Medical Eligibility provides in part:

The Utilization Management Contractor (UMC) is the entity that is responsible for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

BMS Manual § 501.9.2 Initial Medical Evaluation provides in part:

An applicant shall initially apply for the ADW program by having her treating physician, nurse practitioner, or physician's assistant complete and sign a MNER form including ICD diagnosis code(s).

The UMC will not process any MNER form if the referent's signature is more than 60 days old. If the MNER form is incomplete, it will be returned for completion and resubmission, and the applicant will be notified.

If the MNER form indicates that the applicant has Alzheimer's, ... the assessment will not be scheduled without the contact person present to assist the applicant.

DISCUSSION

Pursuant to the policy, Applicants for the ADW program must be medically eligible for a 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. The PAS is the assessment tool used by KEPRO to determine Appellant eligibility.

Per policy, an individual must have five (5) deficits on the PAS to medically qualify for the ADW Program. Pursuant to the June 5, 2020 PAS, the Appellant was found to have functioning deficits in the areas of *vacate a building, bathing, grooming, and dressing*. The Appellant was denied eligibility for the ADW program because she lacked the 5 deficits required by policy to establish medical eligibility for a nursing home level of care. The Appellant contested the Respondent's denial and argued that she should have been awarded deficits on the PAS in the areas of *eating and continence*.

The Respondent had to prove by a preponderance of evidence that the Appellant did not present with deficits in at least five functioning areas at the time of the PAS. Additionally, the Board of Review must consider the validity of the PAS considered by the Respondent when deciding the Appellant's medical eligibility for the ADW program. Therefore, the Respondent must demonstrate that the information contained within the PAS is reliable.

The policy provides that to initiate an eligibility consideration for the ADW program, the Appellant's physician must complete and sign an MNER form including ICD diagnosis codes. The evidence verified that the Appellant's physician listed a diagnosis for Alzheimer's and a corresponding diagnosis code on the MNER.

The PAS comments made by Nurse Sickles reflected that during the PAS scheduling, the Appellant had denied having a diagnosis of Alzheimer's. The PAS comments reflected that Nurse Sickles contacted the Appellant's physician's office and spoke to a nurse who reported the Appellant's diagnosis of Alzheimer's was recorded in error on the MNER. The PAS notation regarding Nurse Sickles' conversation with the physician's nurse is not sufficient to negate the MNER physician's

record without corroborating medical evidence. The MNER states, “see attachment,” but no attachment was included in the evidence.

On the PAS, Nurse Sickles recorded, “The diagnoses listed on the MNER were reviewed with those present for the ADW visit. All present verbalized agreement.” These comments regarding an agreement with MNER diagnoses are inconsistent with other comments on the PAS regarding an incorrect diagnosis of Alzheimer’s being reflected on the MNER. The term “visit” is confusing because the evidence verified that the PAS was conducted by phone rather than an in-person visit. Further, the reference of “all present” is inconsistent with PAS documentation and Respondent witness hearing testimony that established the Appellant and Nurse Sickles were the only PAS attendees. Additionally, #35 through #37 on the PAS reflected the physician’s recommendation — which lists primary diagnoses of Lung Mass and Alzheimer’s.

Due to the inconsistent nature of the information contained in the PAS regarding the Appellant’s Alzheimer’s diagnosis, this Hearings Officer could not rule out the diagnosis listed on the MNER. The MNER completed by the Appellant’s physician was found by this Hearings Officer to be more reliable than the PAS notation made by Nurse Sickles regarding the Alzheimer’s diagnosis being listed in error. Pursuant to the policy, since the MNER form indicated that the Appellant has Alzheimer’s, the assessment should not have been scheduled without the contact person present to assist the Appellant. The evidence established that the Appellant’s physician had listed the Appellant’s contact person on the MNER. No evidence was entered to demonstrate the PAS was scheduled with the Appellant’s contact person present to assist the Appellant. As the PAS was not scheduled as required by policy, the information contained within the PAS cannot be relied upon.

Throughout the hearing, testimony was provided regarding the Appellant’s functioning in the areas of *eating* and *continence*. During the review of the matter, this Hearing Officer found the PAS to be invalid. Because the PAS the Respondent relied upon when making the determination was found to be invalid, arguments regarding the PAS deficit findings were given little weight in the decision of this Hearing Officer.

CONCLUSIONS OF LAW

- 1) If the MNER form indicates that the applicant has Alzheimer’s, the assessment must not be scheduled without the contact person present to assist the applicant.
- 2) The evidence verified that the Appellant’s physician listed a diagnosis of Alzheimer’s and listed the Appellant’s brother as the Appellant’s contact person on the MNER.
- 3) The preponderance of evidence failed to establish that the Respondent scheduled the PAS with the Appellant’s brother present to assist her.
- 4) Because the June 5, 2020 PAS was scheduled and completed without including the Appellant’s contact person, the results of the PAS are invalid.

- 5) Because the PAS was unreliable, the Respondent failed to prove that the Appellant did not present with deficits in at least five functioning areas at the time of the PAS.
- 6) A new PAS must be conducted with consideration to the Alzheimer's diagnoses listed on the MNER and the policy requirement for the Appellant's contact person to be present to assist her.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's denial of the Appellant's medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) program. The matter is **REMANDED** for completion of a new PAS —with consideration to the policy requirement for the Appellant's contact person to be present to assist her— and a new determination of the Appellant's medical eligibility for the ADW program.

ENTERED this 4th day of September 2020.

Tara B. Thompson, MLS
State Hearing Officer