



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

July 9, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2171

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: Bureau of Senior Services

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2171

**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 July 8, 2015, on an appeal filed May 29, 2015.

The matter before the Hearing Officer arises from the March 4, 2015, decision by the Respondent to deny the Appellant services under the Aged and Disabled Waiver program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN with the West Virginia Medical Institute. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, Social Worker with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy §§ 501.5.1 and 501.5.1.1
- D-2 Pre-Admission Screening dated February 2, 2015
- D-3 Medical Necessity Evaluation Request dated September 4, 2015
- D-4 Potential Denial dated February 17, 2015
- D-5 Notice of Decision: Final Denial dated March 4, 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 February 2, 2015, the Appellant was evaluated to determine medical eligibility for the Aged and Disabled Waiver program.
- 2) West Virginia Medical Institute (WVMI) Nurse [REDACTED] completed a Pre-Admission Screening (PAS) (D-2) with the Appellant to assess her functional abilities in the home. Deficits in the areas of vacating a building in an emergency and continence were identified during the medical assessment.
- 3) Five (5) deficits (D-1) must be established to qualify for services under the Aged and Disabled Waiver program.
- 4) The Respondent issued notice (D-5) to the Appellant of its decision to deny Aged and Disabled Waiver services as a result of the determination that she did not meet the medical criteria for the program.

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

The Appellant and her witness argued that the Appellant had deficits in the areas of bathing, dressing, grooming and medication administration.

Regarding the area of bathing, the Appellant reported that the nursing home staff at the facility where she resides washes her back for her. This information was reported to Nurse [REDACTED] during the February 2015 medical assessment. Because the Appellant receives physical assistance in the area of bathing, a deficit in this area will be awarded.

The Appellant reported to Nurse [REDACTED] that she dressed herself independently. When questioned about her ability to put on a bra, the Appellant denied wearing one. The Appellant's witness contended that while the Appellant does not wear a bra at the facility, she would wear one while outside the facility and would be unable to perform this task without assistance. Nurse [REDACTED] thoroughly explored the area of dressing during the medical assessment and the Appellant had the opportunity to report the need for physical assistance in this area, which she failed to do.

The Appellant denied needing assistance in area of grooming during the assessment. A podiatrist cut her toe nails at the facility, a service provided to all residents, yet the Appellant reported to Nurse [REDACTED] that she could perform this task independently. The Appellant's witness purported that the Appellant could not cut her own toe nails as she could not remain bent over long enough. Based on the Appellant's statement of her ability regarding grooming at the time of the evaluation, she was correctly assessed as independent in grooming.

The testimony provided held that the Appellant has the physical ability to take her medications, but would need assistance setting up her pills in a pill planner and would need reminders of when to take her medications. The Appellant was correctly assessed as requiring prompting/supervision in medication administration, which does not qualify as a deficit.

CONCLUSIONS OF LAW

Whereas only three (3) deficits were identified as a result of the February 2015 medical assessment - vacating in an emergency, bathing and continence - the Appellant did not meet the criteria to receive Aged and Disabled Waiver services.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's denial of services under the Aged and Disabled Waiver program for the Appellant.

ENTERED this 9th day of July 2015

**Kristi Logan
State Hearing Officer**