



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
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Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 14, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2441

Dear [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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services

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

████████████████████,

Appellant,

v.

Action Number: 16-BOR-2441

**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 September 13, 2016, on an appeal filed August 4, 2016.

The matter before the Hearing Officer arises from the July 28, 2016 decision by the Respondent to deny the Appellant's request for benefits and services under the Medicaid Aged and Disabled Waiver Program.

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

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy Manual §§ 501.9.1 and 501.9.1.1
- D-2 Pre-Admission Screening for Aged and Disabled Waiver Services, dated July 7, 2016
- D-3 Pre-Admission Screening Summary, submitted July 8, 2016
- D-4 Notice of Decision, dated July 28, 2016

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) On July 7, 2016, the Appellant was evaluated to determine medical eligibility for initial participation in the Aged and Disabled Waiver (ADW) Program. (D-2)
- 2) KEPRO Registered Nurse (RN) [REDACTED] (Nurse McFarland), completed the Pre-Admission Screening (PAS) form with the Appellant and identified four (4) functional deficits - vacating a building in (or during) an emergency, bathing, grooming, and dressing. Eligibility requires deficits be established in at least five (5) functional areas. (D-2 and D-3)
- 3) The Appellant contended that he should have been awarded an additional deficit in the functional area of walking.
- 4) During the July 7, 2016 PAS, Nurse [REDACTED] did not visually assess the Appellant's ability to walk because he was short of breath. Nurse [REDACTED] asked the Appellant if he used an assistive device and if someone had to physically assist the Appellant.
- 5) The Appellant was identified on the PAS as a level 2 (supervised and/or requiring an assistive device) in the area of walking, because he reported that he used a cane to walk in his home. The Appellant reported that he can walk a few steps, and then has to rest before walking again. The Appellant added that he lives alone and does not have anyone to assist him. (D-2)

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.9.1 sets forth the medical eligibility criteria for the ADW Program. 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 appealed the Department's decision to deny ADW services based on insufficient deficits to establish medical eligibility. The Appellant contended that he should have been awarded an additional deficit in the functional area of walking.

Policy stipulates that an individual must require hands-on physical assistance to qualify for a functional deficit in the area of walking. The Respondent's witness, Nurse [REDACTED], did not ask the Appellant to demonstrate his ability to walk at the time of the PAS because he was short of breath. Instead, she assessed the Appellant based on his statement that he used a cane to walk around his home and that he did not have hands-on physical assistance. Information secured during the PAS, in conjunction with the testimony provided by both Nurse [REDACTED] and the Appellant, revealed that the Appellant required an assistive device to walk in his home, but not hands-on physical assistance.

The Appellant contended that while he was able to walk in his home using an assistive device, it was difficult, because walking made him short of breath. He stated he had to use a cane in his home, because he was unable to get his wheelchair upstairs. The Appellant also stated his physician provided a statement to the housing authority indicating the Appellant should be permitted to have someone in the home with him to provide full-time assistance. However, the Appellant did not provide a copy of the physician's statement during the PAS or hearing, so this could not be verified.

Although the Appellant did not demonstrate his ability to walk for the assessing nurse, Nurse [REDACTED] correctly assessed the Appellant as having four (4) deficits for purposes of the ADW Program, and the resulting determination of ADW eligibility was correct.

CONCLUSION OF LAW

Whereas the Appellant demonstrated four (4) functional deficits and the ADW medical eligibility criteria specifies that there must be at least five (5) deficits, the Appellant does not meet the medical eligibility for the ADW Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny the Appellant's request for benefits and services through the Aged and Disabled Waiver Medicaid Program.

ENTERED this 14th Day of September 2016.

**Natasha Jemerison
State Hearing Officer**