

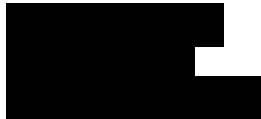


**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

September 7, 2023



RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-2247

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra Grueser, DHHR

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-2247

[REDACTED]

Appellant,

v.

**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 [REDACTED]. 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 August 29, 2023, on a timely appeal filed on June 13, 2023.

The matter before the Hearing Officer arises from the July 3, 2023 decision by the Respondent to terminate the Appellant's Aged/Disabled Waiver services due to a medical eligibility finding.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as a witness for the Respondent was Erika Blake. The Appellant was self-represented. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|--|
| D-1 | BMS Provider Manual
Chapter 501 Aged and Disabled Waiver, §501.11 (excerpt) |
| D-2 | Notice dated June 9, 2023 |
| D-3 | Notice dated July 3, 2023 |

- D-4 Pre-Admission Screening (PAS) form, dated June 9, 2023
- D-5 PAS Summary form, dated June 9, 2023
- D-6 PAS Summary form, dated June 16, 2022
- D-7 Email exchange dated July 31, 2023

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 a recipient of Aged/Disabled Waiver (ADW) services.
- 2) The Respondent assessed the Appellant's medical need for ADW services on June 9, 2023.
- 3) The Respondent's assessing nurse, Erika Blake, recorded her findings regarding the Appellant on the June 9, 2023 Pre-Admission Screening (PAS) form.
- 4) The Respondent mailed the Appellant a notice (Exhibit D-2) dated June 9, 2023, which advised the Appellant of a potential termination of ADW services, adding "If you believe you have additional information regarding your medical conditions that was not considered, please submit those records to KEPRO within 2 weeks from the date of this letter..."
- 5) The Appellant did not submit additional information by the set deadline to the Respondent through its contracted agency, KEPRO.
- 6) The Respondent issued a final termination notice (Exhibit D-3) dated July 3, 2023, to the Appellant.
- 7) This notice (Exhibit D-3) stated that "Medical eligibility for the Aged and Disabled Waiver Program requires deficits in at least five (5) of 13 critical areas..." and noted the Appellant's PAS form indicated deficiencies in none of those areas.
- 8) The Appellant contested the area of *vacating* a building in the event of an emergency.
- 9) The PAS noted the Appellant was independent in the area of *vacating*. (Exhibit D-4)

- 10) PAS comments regarding the Appellant's ability to walk noted, "[Appellant] reported the ability to walk without hands on assistance at this time...denies use of [medical equipment] to aide in task. Fall history/Safety risk: none..." (Exhibit D-4)
- 11) PAS comments regarding the Appellant's ability to transfer noted, "[Appellant] reported the ability to transfer without hands on assistance at this time from the bed, toilet, and furniture used inside the home..." (Exhibit D-4)
- 12) General PAS comments regarding the Appellant noted, "[Appellant] stated that she has improved since having valves in lungs last [November]. She stated that she no longer needs assistance with [activities of daily living]..." (Exhibit D-4)

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §501.11.1 Medical Criteria provides that an individual must have five deficits as described on the PAS to qualify medically for the ADW program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Points	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not meal 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 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 or two-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 his/her own medications	

DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent's decision to terminate the Appellant's ADW services due to a medical eligibility finding. The Respondent must show, by a preponderance of the evidence, that its determination that the Appellant was medically ineligible for ADW services was correct.

The Appellant was a recipient of ADW services and the Respondent reviewed her eligibility for the program through an assessment conducted on June 9, 2023. Erika Blake, the Respondent's reviewing nurse, conducted the assessment with the Appellant and noted her findings on the June 9, 2023, PAS form (Exhibit D-4). The initial determination of the Respondent was that the Appellant was no longer medically eligible for ADW services, but the initial determination (Exhibit D-2) advised the Appellant she had two weeks to provide additional information for review. After no additional information was submitted, the Respondent mailed a final determination notice (Exhibit D-3) indicating services would be terminated based on medical ineligibility.

ADW policy identifies 13 areas of medical needs, in addition to the thresholds for establishing deficiencies in these areas. The policy requires an applicant to establish deficits in at least five (5) of these areas to be medically eligible for ADW services. On both the initial (Exhibit D-2) and final (Exhibit D-3) determinations, the Appellant had deficits in zero areas. The Appellant received ADW services in the past, and her testimony and PAS comments reflected an improvement since the Appellant had surgery in November 2022.

The Appellant did not clearly dispute any of the ADW medical areas set by policy. She testified that she has fatigue at times and has "good days" and "bad days." She was unable to estimate how many days in a month were "bad days" to provide perspective. She noted her surgery improved her condition, but she is concerned about a change in her medical condition. She was concerned a change in the weather could change her functional abilities. Because she mentioned the PAS area of vacating a building in the event of an emergency, notes regarding the related areas of walking and transferring were considered. These notes clearly indicate independent ability in both areas, which support the PAS finding that she was independent in vacating. Testimony from the Appellant in this area, and regarding her general medical condition, were focused on speculation about possible changes instead of demonstrating current deficits.

There were no additional deficits awarded as a result of evidence or testimony. The Respondent correctly assessed the Appellant with zero deficits on its June 9, 2023 PAS, and its decision to terminate the Appellant's ADW services on this basis is affirmed. The Appellant may reapply for ADW services at any time, particularly upon a change in medical conditions.

CONCLUSIONS OF LAW

- 1) Because the Appellant is independent in the areas of *walking* and *transferring*, she is capable of independently *vacating* a building in the event of an emergency.

- 2) Because the Appellant is independent with regard to *vacating*, this medical area does not reflect a deficit.
- 3) Because the Appellant did not establish deficits in at least five (5) medical areas set by policy, the Appellant did not establish medical eligibility for the ADW program.
- 4) Because the Appellant failed to establish medical eligibility for ADW services, the Respondent correctly terminated those services to the Appellant.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to terminate the Appellant's Aged/Disabled Waiver services due to a medical eligibility finding.

ENTERED this _____ day of September 2023.

**Todd Thornton
State Hearing Officer**