



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

**Jeffrey H. Coben, MD  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

April 12, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1305

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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
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 Number: 23-BOR-1305**

**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 April 11, 2023, on an appeal filed March 2, 2023.

The matter before the Hearing Officer arises from the February 7, 2023, decision by the Respondent to deny medical eligibility for services under the Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, Bureau for Senior Services. Appearing as a witness for the Respondent was Sarah Gadomski, Nurse Reviewer with KEPRO. The Appellant was self-represented. The witnesses were sworn in, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §501.11
- D-2 Medical Necessity Evaluation Request dated November 26, 2022
- D-3 Notice of Potential Denial dated January 18, 2023
- D-4 Notice of Denial dated February 7, 2023
- D-5 Pre-Admission Screening dated January 12, 2023
- D-6 Pre-Admission Screening Summary dated January 12, 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 applied for services under the Aged and Disabled Waiver (ADW) Program.
- 2) A Pre-Admission Screening (PAS) medical assessment was completed with the Appellant on January 12, 2023, to determine the Appellant's functional abilities (Exhibit D-5).
- 3) The Appellant was awarded deficits in the functional areas of bathing and grooming (Exhibits D-5 and D-6).
- 4) The Respondent issued a Notice of Denial on February 7, 2023, advising the Appellant that his application for ADW services had been denied as he failed to have at least five (5) deficits as derived from the PAS (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.

<b>Section</b>	<b>Description of Points</b>	
#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
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**

Policy stipulates that medical eligibility for the ADW Program is determined by a medical evaluation using the PAS assessment tool. An individual must have at least five (5) functional deficits as derived from the PAS to qualify for ADW services. The Appellant received two (2) deficits in bathing and grooming on the January 2023 PAS.

The Appellant testified that he cannot stand for long periods of time due to problems with his spine and knees and has difficulty walking on “bad days”. The Appellant uses pain medication, which was not included in the PAS. The Appellant did not dispute the findings of the PAS or offer testimony that could potentially identify additional deficits.

The January 2023 PAS documented that the Appellant required physical assistance to vacate in the event of an emergency, however, he was only rated as requiring supervision. Testimony from the nurse reviewer confirmed that the Appellant would need physical assistance to vacate in an emergency due to use of a cane and multiple stairs in his home. The January 2023 PAS will be corrected to reflect the additional deficit in vacating in an emergency.

Whereas the Appellant was found to be demonstrating only three (3) deficits from the January 2023 PAS, the Appellant does not meet the medical criteria for services under the Aged and Disabled Waiver Program.

### **CONCLUSIONS OF LAW**

- 1) An individual must have five functional deficits as derived from the PAS assessment tool to qualify medically for the Aged and Disabled Waiver Program.
- 2) The Appellant received deficits in bathing and grooming on the January 2023 PAS.
- 3) Based upon the information presented, the Appellant was found to be demonstrating a deficit in vacating in an emergency.
- 4) With only three functional deficits, the Appellant does not meet the medical criteria to receive Aged and Disabled Waiver services.

## **DECISION**

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny medical eligibility for services under the Aged and Disabled Waiver Program.

**ENTERED this 12<sup>th</sup> day of April 2023.**

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**Kristi Logan**  
**Certified State Hearing Officer**