



**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**

August 3, 2023



RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1987

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, BoSS

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1987

**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 August 3, 2023, on an appeal filed June 13, 2023.

The matter before the Hearing Officer arises from the May 30, 2023 decision by the Respondent to deny the Appellant's medical eligibility for the 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 Respondent was Rebecca Monroe, RN, KEPRO. The Appellant appeared pro se. Appearing as witnesses was ██████████, RN, Integrated Resources. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual § 501.11
- D-2 Notice of Decision dated May 30, 2023
- D-3 Notice of Potential Termination dated May 11, 2023
- D-4 Medical Necessity Evaluation Request dated March 29, 2023
- D-5 Pre-Admission Screening dated May 10, 2023
- D-6 Pre-Admission Screening Summary dated May 10, 2023
- D-7 Medical Necessity Evaluation Request dated February 24, 2022
- D-8 Pre-Admission Screening dated May 16, 2022
- D-9 Pre-Admission Screening Summary dated May 16, 2022
- D-10 Medication Checklist

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 May 10, 2023, the Appellant was evaluated for continued eligibility for the Aged and Disabled Waiver (ADW) Program.
- 2) A Pre-Admission Screening (PAS) assessment was completed with the Appellant to determine his functional abilities in the home. (Exhibit D-5)
- 3) The Appellant was awarded functional deficits in the areas of vacating, bathing, dressing, and grooming. (Exhibit D-6)
- 4) On May 11, 2023, the Respondent issued a Notice of Potential Termination to the Appellant and his physician. (Exhibit D-3)
- 5) On May 30, 2023, the Respondent issued a Notice of Decision to the Appellant, informing him that he was determined medically ineligible to continue to receive services under the ADW Program because he had less than the five required deficits for eligibility. (Exhibit D-2)
- 6) The Appellant's 2022 PAS assessment awarded him six total deficits. (Exhibit D-9)

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
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 Medicaid Aged/Disabled Title XIX (HC) Waiver Services Program (ADW Program) identifies medically eligible individuals for the program when they demonstrate five functional deficits in the designated life areas on the Pre-Admission Screening (PAS) assessment. During an annual PAS assessment, the Respondent determined that the Appellant failed to meet the medical requirements of the program because he failed to demonstrate the necessary amount of functional deficits. The Respondent must show by a preponderance of the evidence that the Appellant did not demonstrate the necessary five functional deficits for program eligibility.

Rebecca Monroe, RN, KEPRO, conducted the PAS assessment with the Appellant. Based on the information provided, the assessing nurse awarded functional deficits in the areas of vacating, bathing, grooming, and dressing.

The Appellant and his witness contend that an additional deficit should have been awarded in walking. Testimony indicated that the Appellant resides in the basement area of his son's home which is accessible by multiple stairs and that he requires a quad cane for ambulation. The PAS

assessment (Exhibit D-5) documents that the entrances to the Appellant's living quarters have 38 steps with a railing. During the PAS assessment, the Appellant denied any difficulties with ambulation, reported the occasional use of a cane to ambulate, and reported the ability to ambulate without hands on assistance of others. Additionally, the Appellant denied any falls in the last six months prior to the assessment.

To be awarded a functional deficit in walking, an individual must be assessed at a Level 3 or higher, requiring one-person or two-person assistance to ambulate in the home. During the assessment, the Appellant reported an ability to ambulate independently without the use of physical assistance and was assessed as a Level 2 requiring supervision or an assistive device. Because the Appellant does not require physical assistance for ambulation, an additional deficit in the contested area cannot be awarded.

Based on the information provided during the hearing, no additional deficits can be awarded. The Respondent's decision to terminate ADW services is affirmed.

CONCLUSIONS OF LAW

- 1) To qualify medically for the ADW program, an individual must have five functional deficits as derived from the PAS assessment.
- 2) The Appellant received functional deficits in vacating, bathing, grooming, and dressing.
- 3) Based on information provided during the hearing, no additional deficits can be awarded.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to terminate the Appellant's services under the Aged and Disabled Waiver Program.

ENTERED this ____ day of August 2023.

Eric L. Phillips
State Hearing Officer