



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

September 13, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2344

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
State Hearing Officer
Member, State Board of Review

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

cc: Bureau of Senior Services
Central West Virginia Aging Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2344

**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 6, 2016, on an appeal filed July 26, 2016.

The matter before the Hearing Officer arises from the July 12, 2016 decision by the Respondent to terminate the Appellant's 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 Kepro. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Case Manager with Central West Virginia Aging Services and ██████████ with Central West Virginia Aging Services. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy §501.9.1
- D-2 Potential Termination Notice dated June 17, 2016
- D-3 Notice of Decision: Final Termination dated July 12, 2016
- D-4 Pre-Admission Screening dated June 23, 2016
- D-5 Pre-Admission Screening dated May 30, 2016

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 30, 2016, the Appellant was reevaluated to determine continuing medical eligibility for the Aged and Disabled Waiver Program.
- 2) Kepro Nurse [REDACTED] completed a Pre-Admission Screening (PAS) (D-5) with the Appellant to assess his functional abilities in the home.
- 3) The Respondent issued notice (D-3) to the Appellant of its decision to terminate Aged and Disabled Waiver services as a result of the determination that he did not meet the medical criteria for the program.
- 4) The Appellant was assessed as having functional deficits, in the areas of vacating a building in an emergency, bathing and grooming. Five (5) deficits (D-1) must be established to qualify for services under the Aged and Disabled Waiver Program.

APPLICABLE POLICY

Aged and Disabled 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 Aged and Disabled Waiver 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 claimed he has deficits in the areas of eating, dressing, continence, transferring, wheeling, and medication administration.

Eating: The Appellant testified that he usually avoids foods that need to be cut up, but his homemaker will cut his food for him when needed. The Appellant attributed his need for assistance with eating due to arthritis in his hands; however, no diagnosis of arthritis was available.

Dressing: The Appellant testified that he is able to dress himself once his homemaker picks out his clothing for him.

Bladder and Bowel Incontinence: The Appellant testified that he is unable to vacate his bladder and bowels for days at a time, and when he does have the urge to vacate, he is unable to reach the bathroom before having an accident.

Transferring and Walking: The Appellant testified that a surgery in August 2016 left him weaker than before and he requires additional assistance in transferring and requires hands-on assistance in walking outside of the home.

Wheeling: The Appellant testified that he is being evaluated for a power scooter wheelchair.

Medication Administration: The Appellant testified that he requires reminders to take his medications.

The Appellant testified that he is able to dress independently, requiring assistance from his homemaker to pick out his clothing for him. To receive a deficit in this area, physical assistance from another person to dress is required. The Appellant was correctly assessed as a Level 1, prompting/supervision, in the area of dressing.

During the May 2016 assessment, the Appellant denied needing assistance in cutting foods, noting that he mostly ate pre-cut meals. Based on the documentation and testimony provided, the Appellant may require occasional assistance in the area of eating, which would not constitute a deficit in this area.

Nurse [REDACTED] observed the Appellant transferring with the aid of furniture and walking with the aid of a walker throughout his home during the medical evaluation. The Appellant testified to experiencing a decline in many of his activities of daily living after surgery that took place months after the evaluation. Based on the documentation and testimony presented, the Appellant was able to transfer and walk with the use of assistive devices, a Level 2, which does not constitute deficits in the areas of transferring and walking.

The Appellant did not use a wheelchair in the home at the time of the medical evaluation or at the time of the hearing. A deficit cannot be awarded in the area of wheeling.

The Appellant requires reminders to take his medications, but has the physical ability to administer them to himself. The Appellant was correctly assessed as requiring prompting/supervision with medication administration, which is not a deficit.

The Appellant disclosed to Nurse Fout that he experiences bowel incontinence 1-2 times per week, and denied any episodes of bladder incontinence. The testimony provided by the Appellant confirmed that he experiences occasional episodes of incontinence, which is not considered a deficit.

CONCLUSIONS OF LAW

- 1) The Appellant was assessed as demonstrating three (3) functional deficits during the May 2016 medical evaluation.
- 2) Five (5) deficits must be present for an individual to receive services under the Aged and Disabled Waiver Program.
- 3) Based on the documentation and testimony provided, no additional deficits were established for the Appellant.
- 4) The Appellant no longer meets the medical criteria to continue receiving services under the Aged and Disabled Waiver program.

DECISION

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

ENTERED this 13th day of September 2016

Kristi Logan
State Hearing Officer