



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 30, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2774

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 Official 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,

Lori Woodward
State Hearing Official
Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2774

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICIAL

INTRODUCTION

This is the decision of the State Hearing Official 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 November 29, 2016, on a timely appeal filed September 29, 2016.

The matter before the Hearing Official arises from the Respondent's denial of the Appellant's Aged/Disabled Waiver Medicaid Program application.

At the hearing the Respondent appeared by Tamra Grueser, RN from the Bureau of Senior Services. Appearing as a witness for the Respondent was Tony Myers (Nurse Myers), RN from Kepro. The Appellant appeared *pro se* and testified on his own behalf. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Medicaid Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.9.1 and 501.9.1.1
- D-2 Updated Pre-Admission Screening (PAS), dated September 13, 2016, and initial PAS, dated August 29, 2016
- D-3 PAS Summary dated August 29, 2016 and PAS Summary dated September 13, 2016
- D-4 Notice of Potential Denial, dated August 30, 2016
- D-5 Notice of Decision, Final Denial, dated September 14, 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 Official sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On August 29, 2016, the Appellant underwent an initial PAS as a part of his application for the Aged and Disabled Waiver (ADW) program. (Exhibit D-2)
- 2) Tony Myers, RN, with Kepro, evaluated the Appellant and found four (4) functional deficits in the areas of *vacating a building in the event of or during an emergency (vacating), bathing, dressing and grooming*. (Exhibits D-2 and D-3)
- 3) On August 30, 2016, a Potential Denial Letter was sent to the Appellant stating he did not meet medical eligibility criteria in at least 5 out of the 13 critical areas required by policy for the ADW program. (Exhibit D-4)
- 4) The Appellant's primary care physician provided Nurse Myers with additional information on September 13, 2016, regarding the areas of urinary continence, transferring, and walking.
- 5) After evaluation and consideration of the additional information provided by the Appellant's physician, Nurse Myers assessed the Appellant with a Level 2, occasional incontinence, due to his denial of urinary incontinence and use of incontinence undergarments during the PAS, and a Level 2, supervised/assistive device for walking. However, no additional deficits were awarded by these changes. (Exhibit D-2)
- 6) The Appellant was sent a Notice of Decision: Final Denial on September 14, 2016, showing no additional deficits being awarded for program eligibility.
- 7) The Appellant believed he should have been awarded deficits in the areas of *eating, continence of bladder, transferring and walking*.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual §501.9.1 sets forth the medical eligibility criteria. 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

Policy provides that an individual must have at least five qualifying deficits to be medically eligible for ADW Program services. The assessing nurse, Nurse Myers, determined at the time of the PAS that the Appellant had four qualifying deficits in the areas of *vacating, bathing, dressing and grooming*. Appellant proposed additional deficits should have been awarded in the areas of *eating, continence of bladder, transferring and walking*.

In order to be awarded a deficit for the functional area of eating, ADW policy requires an assessment of at least a Level 2, physical assistance to get nourishment, not preparation. The Appellant testified that he was able to cut his food and feed himself, but was unable to prepare his meals because he could not stand for long periods of time. The Department correctly assessed the Appellant as a Level 1, Self/Prompting.

The Appellant indicated that he needed assistance to transfer from sitting to standing and for walking, stating that he cannot accomplish these tasks fast enough to get to the bathroom in time, necessitating the use of “pull-ups” (incontinence undergarments). The Appellant testified that he reported this to Nurse Myers during the PAS. However, the PAS indicates that the Appellant reported that he was not incontinent of bladder, and did not use incontinence undergarments. The additional information provided by the Appellant’s physician on September 13, 2016, did indicate that the Appellant was incontinent of bladder but did not indicate how often. Nurse Myers did change the level of bladder incontinence from a Level 1, Continent, to a Level 2, Occasionally Incontinent. In order to be awarded a deficit in the area of bladder continence, a Level 3, Incontinent more than three (3) times a week must be found.

The Appellant testified that he had urinary incontinence four or five times a day, necessitating the use of “pull-ups”. However, this is in direct contradiction with the findings on the August 29, 2016 PAS wherein he denied urinary incontinence or the use of incontinence undergarments. It is noted

that the Appellant did disclose occasional bowel incontinence at the time of the PAS assessment, but yet denied urinary incontinence; thereby putting the veracity of his testimony in question. As there was no other evidence to show the Appellant was incontinent more than three times a week, the Department correctly assessed the Appellant at a Level 2, Occasional Incontinence of bladder.

With regard to transferring and walking, Nurse Myers testified that he witnessed the Appellant transfer from sitting to standing with the use of furniture, and able to walk without anyone assisting him. In order to be awarded a deficit for the functional areas of transferring and walking, a Level 3 or higher, One or Two Person Assistance, must be found. The Appellant did not deny he could accomplish transferring and walking without the assistance of another person, but pointed out that Nurse Myers only witnessed him taking four (4) steps at the most and did not make him ambulate for any length of time. The Appellant reiterated that he was unable to ambulate fast enough to the bathroom, and was unable to stand for any length of time. The Department correctly assessed the Appellant at a Level 2, Supervised/Assistive Device for transferring and walking.

CONCLUSION OF LAW

Whereas, the Appellant did not show he should be awarded any additional functional deficits, the Department correctly determined the Appellant was not medically eligible for the Aged/Disabled Waiver Program, as defined in BMS Provider Manual §501.9.1

DECISION

It is the decision of the State Hearing Official to **UPHOLD** the Department's denial of the Appellant's application for the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

ENTERED this 30th day of November 2016.

Lori Woodward, State Hearing Official