



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
416 Adams St.  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

February 11, 2016



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-3629

Dear Ms. [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,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

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

cc: Tammy Grueser, RN, BoSS

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

██████████,

**Appellant,**

**v.**

**Action Number: 15-BOR-3629**

**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 February 10, 2016, on an appeal filed December 9, 2015.

The matter before the Hearing Officer arises from the November 13, 2015 decision by the Respondent to terminate Appellant's benefits and services provided through the Medicaid Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau for Senior Services. Appearing as a witness for the Respondent was ██████████, RN Case Manager, ██████████. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Request for Discontinuation of Services dated 11/2/15
- D-2 Notice of Potential Termination dated 10/23/15
- D-3 Notice of Decision: Final Denial dated 11/13/15
- D-4 Progress notes documented by ██████████, RN, Case Manager
- D-5 Pre-Admission Screening (PAS) Summary dated 10/18/15

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 October 18, 2015, Appellant was evaluated to determine medical eligibility for continued participation in the Aged/Disabled Waiver (ADW) Program. APS Healthcare Registered Nurse [REDACTED] completed the Pre-Admission Screening (PAS) form with the Appellant and identified three (3) functional deficits – vacating a building, grooming and continence.
- 2) On October 23, 2015, Appellant was notified of potential termination (D-2), advising that medical eligibility required identification of at least 5 functional deficits, and that her medical evaluation revealed only three (3) (vacating, grooming and continence). Appellant was advised that she had two (2) weeks to submit any additional medical information that was not already considered in the eligibility determination.
- 3) Pursuant Exhibit D-4, [REDACTED], RN Case Manager, spoke with Appellant on October 27, 2015 and again on November 2, 2015, wherein Appellant advised Nurse [REDACTED] that she agreed with the findings, and that she did not intend to file an appeal.
- 4) On November 2, 2015, Nurse [REDACTED] filed a Request for Discontinuation of Service (D-1) with the Bureau of Senior Services (BoSS), indicating that Appellant was not medically eligible.
- 5) On November 13, 2015, Appellant was notified via a Final Denial (D-3) that her PAS indicated deficiencies in three (3) areas (vacating, grooming and continence), and because she has less than five (5) deficits, as required by Medicaid Program Regulations, she was not medically eligible for ADW Program benefits.
- 6) Because Appellant did not file her appeal until December 9, 2015, Medicaid ADW Program benefits were not continued pending the outcome of her appeal.

## **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**

Regulations that govern the Medicaid Aged and Disabled Waiver Program stipulate that an individual must demonstrate at least five (5) functional deficits to qualify medically for program benefits. Testimony and documentation proffered by the Department, including the testimony of Appellant's Case Manager, confirm that three (3) functional deficits were identified during the medical evaluation conducted in October 2015.

Appellant contended that she should have been awarded a deficit in the functional area of medication administration because she is unable to cut one of her pills. While this information was not documented during the medical assessment and was unknown by her RN Case Manager [REDACTED] the Appellant's testimony was credible. Because this matter can be easily overlooked, and the Appellant's testimony was convincing, a deficit in medication administration is awarded.

The Appellant argued that she should have been awarded a deficit in walking; however, information secured during the medical evaluation, in conjunction with the testimony proffered by Appellant's RN Case Manager, reveals that the Appellant ambulated with the use of a cane at the time of the assessment and did not require any hands-on physical assistance. Moreover, Appellant acknowledged that she ambulated with a cane at the time of her assessment, but indicated that her condition has since deteriorated. Because the Appellant did not require hands-on physical assistance to walk at the time of her medical assessment, a deficit cannot be awarded.

A review of the Appellant's ability to bathe at the time of the assessment reveals that the Appellant reported bathing independently. Appellant reported during the assessment that she took a sponge bath six (6) days per week and a tub bath one (1) day per week. According to RN Case Manager [REDACTED] the plan of care included supervision (someone outside of the bathroom) while the Appellant took her bath – no hands-on physical assistance was provided to transfer or wash. The evidence indicates that the Appellant was not demonstrating a functional deficit in the area of bathing at the time of her October 2015 assessment.

Appellant indicated that she should have been awarded a deficit in the functional area of dressing; however, testimony proffered at the hearing reveals that the Appellant denied requiring physical assistance during the assessment and that she dressed herself daily. In addition, RN [REDACTED] reported that Appellant's plan of care only called for supervision with dressing, not physical assistance. As a result, a deficit in dressing cannot be established.

### **CONCLUSIONS OF LAW**

The Appellant demonstrated three (3) functional deficits (vacating a building, grooming and continence) on the date of the assessment and – as a result of information provided during the hearing – one (1) additional deficit is awarded in the functional area of medication administration. However, because five (5) deficits have not been identified, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Department's decision to terminate the Appellant's benefits and services provided through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

**ENTERED this \_\_\_\_ Day of February 2016.**

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**Thomas E. Arnett**  
**State Hearing Officer**