

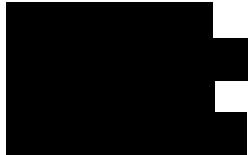


**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661**

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

May 9, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1291

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Tamra R. Grueser, RN, WV Bureau of Senior Services
[REDACTED], [REDACTED], [REDACTED], WV

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-1291

**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 4, 2017, on an appeal filed February 16, 2017.

The matter before the Hearing Officer arises from the January 26, 2017 decision by the Respondent to discontinue the Appellant's medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, of KEPRO. The Appellant appeared *pro se*. Acting as the Appellant's representative was ██████████ from ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy Manual, §§501.9.1 and 501.9.1.1
- D-2 Pre-Admission Screening (PAS) conducted on December 28, 2016
- D-3 PAS conducted on December 9, 2015
- D-4 Letter from ██████████, MD, dated January 20, 2017
- D-5 Notice of Decision: Final Termination, dated January 26, 2017

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 was a member of the Title XIX Aged and Disabled Waiver (ADW) Program. Pursuant to her participation in the program, a nurse from KEPRO conducted a yearly assessment Pre-Admission Screening (PAS) with her in her home on December 28, 2016 (Exhibit D-2).
- 2) As a result of the PAS, the Department assessed the Appellant with four deficits, for vacating her home in the event of an emergency, bathing, dressing and grooming. Since the ADW Program requires five deficits to establish medical eligibility, the Department sent to the Appellant a Notice of Final Termination (Exhibit D-5) on January 26, 2017.
- 3) The Appellant requested a fair hearing to protest the termination of her medical eligibility for the ADW Program.
- 4) The Appellant's representative argued the Appellant should have received additional deficits for eating, continence, orientation, transferring and walking.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual §501.9.1.1 (Exhibit D-1) sets forth the criteria for establishing medical eligibility for the ADW Program. 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

The Appellant received four deficits on her December 28, 2016, PAS (Exhibit D-2). The Appellant argued she should have received additional deficits for eating, continence, orientation, transferring and walking.

The Appellant's representative testified that she did not attend the Appellant's December 28 PAS. She testified that the Appellant's home health registered nurse (RN) was present, but was not as familiar with the case as she was. She stated the RN had met the Appellant only once before the PAS, and being unfamiliar with the Appellant's health needs and concerns, did not provide adequate representation for the Appellant.

The Appellant's representative testified that the Appellant's difficulties with continence and orientation stem from her seizure disorder. She testified that for up to three days after a grand mal seizure, the Appellant may be disoriented and have more frequent continence accidents. The December 2016 PAS states the Appellant reported to the Department's witness, the KEPRO nurse who conducted the PAS, that she had experienced her most recent grand mal seizure about a month before the date the PAS was conducted, and that she was oriented on the date of the PAS. The Appellant's representative stated that the Appellant has multiple daily absence seizures, which are seizures that occur only within the brain, with no physical manifestations. She added that the absence seizures affect the Appellant's orientation, and may lead to falls.

The Appellant's representative testified regarding the Appellant's eating that when she had a flare-up of her diagnosed rheumatoid arthritis (RA), the knuckles of her hands swell to the extent that she cannot bend her fingers enough to hold a knife or fork due to the pain. She added that on the day the PAS was conducted, the Appellant was not experiencing an RA flare up, so she reported to the KEPRO nurse she had no difficulties eating or cutting up firm foods. The Appellant's representative testified that the Appellant had RA flare-ups about three times per week. The Department's witness testified that she recorded on the December 2016 PAS the Appellant was able to sign the consent form of the PAS with "mild difficulty" and that the Appellant was able to hold and light cigarettes. The December 2016 PAS states that the Appellant reported she was able to cut food and feed herself with normal utensils.

The Appellant representative testified that the Appellant's walking and transferring difficulties stem from her peripheral artery disease (PAD). She testified that in 2012, the Appellant had her left femoral artery replaced from her groin to the bottom of her knee. She stated that as a result of

this procedure, she has had four arterial stints on her left side. She stated that the Appellant's left leg swells considerably. She stated that when it swells, the Appellant experiences severe pain and cannot walk or transfer for up to three or four days afterwards. The Appellant testified that when she has a PAD flare-up, her leg swells up and it "feels like it weighs a hundred pounds." The Appellant's representative added that the Appellant had PAD flare-ups several times per month.

Neither the Appellant nor her representative provided testimony or evidence to support their contention that the Appellant should have received deficits for continence, orientation, transferring or walking. However, testimony that the Appellant had rheumatoid arthritis flare-ups two or three times per week supports the contention that the Appellant should have received a deficit for eating. Also, the Department's witness testified the Appellant had mild difficulty signing certain documentation on the day the PAS was conducted, when she was not experiencing an RA flare-up. The Department should have assessed the Appellant with a deficit for eating on the December 2016 PAS.

CONCLUSION OF LAW

The Department assessed the Appellant with four deficits on her December 2016 PAS. Policy found in BMS Provider Manual §501.9.1.1 indicates a member must demonstrate five deficits in order to meet medical eligibility for the ADW Program. Documentation and testimony do not support the Appellant's position that she should have received additional deficits for continence, orientation, transferring or walking. However, documentation and testimony do support the Appellant's position that she should have received a deficit for eating. The Appellant should have received five deficits on the December 2016 PAS, therefore she meets the medical eligibility criteria for the ADW Program.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Department's proposal to deny the Appellant's medical eligibility for benefits and services through the Aged and Disabled Waiver Medicaid Program.

ENTERED this 9th Day of May 2017.

Stephen M. Baisden
State Hearing Officer