



July 27, 2017

[REDACTED]

[REDACTED]

RE: [REDACTED] v.
ACTION NO.: 17-BOR-1712

WVDHHR

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra Grueser
[REDACTED]

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

[REDACTED],
Appellant,

v.

ACTION NO.: 17-BOR-1712

**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 [REDACTED]. 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 July 20, 2017, on an appeal filed April 18, 2017.

The matter before the Hearing Officer arises from the April 4, 2017 decision by the Department to deny medical eligibility for the Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN from the Bureau for Senior Services. Appearing as a witness for the Respondent was [REDACTED] (Nurse [REDACTED]), RN from KEPRO. The Appellant appeared *pro se* and testified on her own behalf. Appearing as witnesses for the Appellant were [REDACTED], the Appellant's niece, and [REDACTED], with the [REDACTED] ([REDACTED]). All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 West Virginia Medicaid Provider Manual, Chapter 501: ADW Services, §501.9, 501.9.1 and 501.9.1.2
- D-2 Pre-Admission Screening (PAS), dated March 28, 2017
- D-3 Notice of Decision: Final Termination, dated April 4, 2017
- D-4 Notice of Potential Termination: 2-week notice to submit additional documentation, dated March 15, 2017
- D-5 PAS Summary, dated April 7, 2016

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) On March 28, 2017, a PAS was completed for the Appellant's application for the ADW Program. (Exhibit D-2)
- 2) Nurse [REDACTED] RN, with KEPRO, evaluated the Appellant and found two (2) functional deficits in the areas of *Vacating a Building* and *Grooming*. (Exhibits D-3 and D-4)
- 3) On March 15, 2017, a Potential Termination letter was sent to the Appellant stating she 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 physician provided additional information on March 28, 2017. (Exhibit D-2)
- 5) No additional deficits were awarded based on additional physician information submitted. (Exhibit D-2)
- 6) On April 4, 2017, the Respondent sent a Notice of Decision to the Appellant, showing no additional deficits were being awarded for program eligibility and that the Appellant was found to be medically ineligible for the Aged/Disabled Waiver Program. (Exhibit D-3)
- 7) The Appellant believed she should have been awarded deficits in the areas of *Eating, Bathing, Dressing, Transfer, Walking, and Administering Medications*.
- 8) On April 18, 2017, the Appellant submitted written request for hearing on the basis she had dialysis the morning of the PAS assessment and was confused on how to answer questions. The Appellant asserted that she felt overwhelmed due to several people being present.

APPLICABLE POLICY

ADW Manual §501.6 ADW Program Eligibility sets forth that:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program: ...

D. Be approved as medically eligible for nursing home level of care and in need of services...

ADW 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 Decubitis; 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 Functioning abilities of individual in the home

- a) Eating: Level 2 or higher (physical assistance to get nourishment, not preparation)
- 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, 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 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 her own medications

DISCUSSION

Pursuant to policy, Applicants for the ADW program must meet all given criteria to be eligible for the program. These criteria include being approved as medically eligible for nursing home level of care and in need of services. KEPRO is the Utilization Management Contractor (UMC) responsible for conducting medical necessity assessments to confirm a person's medical

eligibility for waiver services. Per policy, an individual must have five (5) deficits on the PAS to qualify medically for the ADW Program. On March 28, 2017, Nurse [REDACTED] RN, with KEPRO evaluated the Appellant and found two (2) functional deficits in the areas of *Vacating a Building* and *Grooming*. Present during the assessment were the Appellant, [REDACTED], RN, with [REDACTED] and [REDACTED], social worker for [REDACTED]. On March 15, 2017, a Potential Termination letter was sent to the Appellant stating that she did not meet the medical eligibility criteria threshold of 5 out of 13 critical areas required to qualify for the ADW Program. The Appellant's physician provided additional information on March 28, 2017, however; information was not sufficient to award any additional functional deficits. On April 4, 2017, the Respondent sent a Notice of Decision to the Appellant advising her that she was found to be medically ineligible for the ADW Program. The Appellant contends that she should have been awarded deficits in the areas of *Eating*, *Bathing*, *Dressing*, *Transfer*, *Walking*, and *Administering Medications*.

The Respondent had to show by a preponderance of evidence that the UMC followed policy in determining the Appellant's medical eligibility for the ADW program:

Eating

ADW policy requires an assessment of at least a Level 2, physical assistance to get nourishment, not preparation. On the PAS, the Appellant scored Level 1- self/prompting. The Appellant reported during the assessment that she had the ability to cut food, feed herself with normal utensils, and denied use of adaptive equipment to aide in the task of eating. During the hearing, the Appellant testified that her niece cooked her meals. Because the Appellant did not require physical assistance with eating, a deficit cannot be awarded.

Bathing

ADW policy requires an assessment of at least a Level 2, physical assistance or more. On the PAS, the Appellant scored Level 1- self/prompting. The Appellant reported during the assessment that she took a tub bath, used no grab bars, had the ability to transfer in and out of the tub without physical support, used the rim of the tub for support for transfer, and denied assist with transfer or washing. The Appellant had reported that someone was present in the home when she bathed, that she washed herself, and that she did not need assistance with washing. During the hearing, the Appellant testified that her condition has gotten a lot worse since the PAS. The Appellant testified that she now requires assistance transferring into the bathtub, washing her back, and washing her feet. Because the Appellant did not require hands-on physical assistance to bathe at the time of her medical assessment, a deficit cannot be awarded.

Dressing

ADW policy requires an assessment of at least a Level 2, physical assistance or more. On the PAS, the Appellant scored Level 1- self/prompting. The Appellant reported during the assessment that she dressed independently which included snapping, buttoning, and zipping. The Appellant reported she could put on her socks and shoes independently. She reported she could tie her shoes before slipping them on. The Appellant reported she could put on her pants, shirt, and undergarments. She denied needing assistance with dressing at the time of the assessment. During

the hearing, the Appellant testified that her niece now assists her with her shoes and lays her clothes out for her. Because the Appellant did not require physical assistance to dress at the time of her medical assessment, a deficit cannot be awarded.

Transfer

ADW policy requires an assessment of at least a Level 3, one-person or two-person assistance in the home. On the PAS, the Appellant scored a Level 2, supervised/ assistive device. The Appellant reported during the assessment that she used a home hospital bed, and reported the ability to transfer without hands-on assistance of one-person or two-persons from the bed, toilet, or furniture inside the home. Nurse [REDACTED] observed the Appellant using a chair for support to transfer three times during the March 28, 2017 visit with no loss of Appellant balance noted. During the hearing, the Appellant testified that her niece helps her get out of the vehicle and into her home on days that the Appellant has dialysis. The Appellant testified that on days she receives dialysis her blood pressure drops, she is weak, and is not physically able to do anything. The PAS assessment is based on the Appellant's abilities within the home and does not include activities outside of the home or transferring in and out of a vehicle. The Appellant was receiving dialysis at the time of the PAS assessment and did not require a one-person or two-person assistance with transfer in the home, therefore a deficit cannot be awarded.

Walking

ADW policy requires an assessment of at least a Level 3, one-person assistance in the home. On the PAS, the Appellant scored a Level 2, supervised/ assistive device. The Appellant reported during the assessment that she could walk without hands-on assistance of one-person or two-persons. She reported use of walls and furniture in the home to aid in walking. Nurse [REDACTED] observed the Appellant during the assessment to independently ambulate to answer the door multiple times with no loss of balance; the Appellant was observed to use walls for support at times but presented with a steady gate. Because the Appellant did not require a one-person or two-person assistance with walking in the home at the time of the assessment, a deficit cannot be awarded.

Administering Medication

ADW policy requires an assessment of being incapable of administering her own medications. Nurse [REDACTED] testified that to meet criteria, the Appellant would have to be unable to place the medication in her mouth or give herself an insulin injection. On the PAS, the Appellant was assessed to be able to administer her own medications "with prompting/supervision." The Appellant reported during the assessment that she could obtain oral medication from packaging, could place oral medications in her own mouth and consume with a drink, could prepare daily injections, and could administer injections. The Appellant reported during the assessment that due to her diabetic related vision issues she could not read the units very well and had to count insulin units by counting the pen clicks. During the hearing, the Appellant testified that her niece now tests the Appellant's sugar levels, dials the Appellant's insulin, and gives the Appellant her oral

medications. No testimony was given to show that the Appellant required assistance with administering medication at the time the PAS assessment was completed. Because the Appellant did not require assistance administering medication at the time of her medical assessment, a deficit cannot be awarded.

█████ nurse and social worker were present during the PAS assessment on March 28, 2017; no information was recorded in the PAS to show that █████ believed the Appellant to have functioning deficits beyond what the Appellant reported to Nurse █████. In the hearing, the Appellant testified that she was not observed to have deficits during the medical assessment due to it being a “good day” and testified that she had not received dialysis treatment prior to the PAS assessment on March 28, 2017. During the hearing the Appellant testified that she is unable to do laundry or wash dishes due to issues with her back. However, no testimony or evidence was presented to indicate that the Appellant had issues with her back or any additional diagnosis at the time of medical assessment that would qualify her for additional deficits to meet medical eligibility for the ADW program.

After review of the testimony and evidence presented, the Respondent proved by a preponderance of evidence that the UMC followed policy in determining the Appellant’s medical eligibility for the ADW program. The Appellant did not show that she should be awarded any additional functional deficits. The Appellant is not medically eligible for nursing home level of care and therefore does not meet the given criteria to be eligible for the ADW program. The Appellant qualifies for two (2) functional deficits, which is below the five (5) deficit threshold to establish medical eligibility. The Respondent was correct in its decision to deny the Appellant’s medical eligibility for the ADW program.

CONCLUSIONS OF LAW

- 1) Policy requires that an applicant show five (5) functional deficits on the Pre-Admission Screening (PAS) to qualify medically for the ADW program.
- 2) Policy requires that applicants for the ADW program must be approved as medically eligible for nursing home level of care and in need of services.
- 3) The Appellant did not show five (5) functional deficits on the PAS.
- 4) The Respondent was correct in its decision to deny the Appellant medical eligibility for the ADW program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department’s decision to deny the Appellant’s application for the Medicaid Aged/Disabled Waiver Program.

ENTERED this 27th day of July 2017.

Tara B. Thompson
State Hearing Officer