



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Inspector General**

June 1, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1586

Dear [REDACTED]n:

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
Certified State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Bureau for Senior Services

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

████████████████████,

Appellant,

v.

Action Number: 22-BOR-1586

**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 May 31, 2022, on an appeal filed April 5, 2022.

The matter before the Hearing Officer arises from the March 28, 2022, decision by the Respondent to terminate services under the Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau for Senior Services. Appearing as a witness for the Respondent was Erika Blake, RN with KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were her daughter, ██████████ and her grandson ██████████. All witnesses were sworn in and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §501.11
- D-2 Pre-Admission Screening dated March 24, 2022
- D-3 Pre-Admission Screening Summary dated March 24, 2022
- D-4 Potential Denial Letter dated January 5, 2021
- D-5 Notice of Termination dated March 28, 2022
- D-6 Medication List
- D-7 Medical Necessity Evaluation Request dated October 18, 2021
- D-8 Pre-Admission Screening Summary dated January 26, 2021
- D-9 Pre-Admission Screening Summary dated February 18, 2022

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On March 24, 2022, the Appellant was evaluated for continued eligibility for services under the Aged and Disabled Waiver (ADW) Program.
- 2) A Pre-Admission Screening (PAS) was completed with the Appellant to determine her functional abilities in the home (Exhibit D-2).
- 3) The Appellant received a deficit in grooming (Exhibits D-2 and D-3).
- 4) The Respondent issued a Notice of Termination on March 28, 2022, advising the Appellant that she no longer met the medical criteria to continue receiving services under the Aged and Disabled Waiver Program (Exhibit D-5).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §501.11.1 Medical Criteria provides that an individual must have five deficits as described on the PAS to qualify medically for the ADW program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Points	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not
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 Continence, 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 or two-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 his/her own medications	

DISCUSSION

Policy stipulates that medical eligibility for the ADW Program is determined by a yearly medical evaluation using the PAS assessment tool. An individual must have at least five (5) functional deficits as derived from the PAS to qualify for ADW services. The Appellant received one (1) deficit in grooming on the March 2022 PAS.

The Appellant's representatives contested the Appellant not receiving deficits in the areas of vacating in an emergency, eating, bathing, dressing, bladder incontinence, transferring, walking and medication administration.

Vacating

Nurse reviewer Erika Blake assessed the Appellant as a Level 1 – with supervision – for vacating a building in an emergency. The Appellant's grandson and caregiver, [REDACTED], contended that the Appellant would be unable to vacate her home in an emergency without assistance. [REDACTED] testified that the Appellant has bad knees and has a history of falling and she would be unable to navigate the stairs leading off the front and back exits to her home without assistance.

Eating

The Appellant was assessed as a Level 1 – self/prompting – in eating. [REDACTED] testified that the Appellant has difficulty cutting meats due to arthritis in her hands. [REDACTED] purported that Nurse Blake did not question the Appellant about her ability to cut her own foods, but only asked if she could use a fork and knife.

Bathing

The Appellant was assessed as a Level 1 – self/prompting – in bathing. [REDACTED] testified that due to a recent fall, [REDACTED] assists the Appellant with getting into and out of the shower. [REDACTED] stated the Appellant has been receiving physical assistance with bathing for approximately a month and prior to the recent fall, he did not enter the bathroom while the Appellant was bathing.

Dressing

The Appellant was assessed as Level 1 – self/prompting – in dressing. [REDACTED] testified that he assists the Appellant with putting on sweaters due to limited range of motion in her arms and supervises her in case she falls.

Bladder Incontinence

The Appellant was assessed as a Level 1 – continent – in bladder continence. [REDACTED] reported that the Appellant cannot control her urge to vacate her bladder, and if she is not near a bathroom, she will have an accident. [REDACTED] estimated the Appellant's bladder accidents as occurring 2-3 times a week.

Transferring

The Appellant was assessed as a Level 2 – supervised/assistive device – in transferring. [REDACTED] testified that the Appellant will scoot to the edge of furniture and push up with her arms to a standing position.

Walking

The Appellant was assessed as a Level 2 – supervised/assistive device – in walking. [REDACTED] reported that the Appellant can move throughout the home using a walker, furniture, and walls for support.

Medication Administration

The Appellant was assessed as administering her medications with prompting/supervision. Testimony from [REDACTED] and [REDACTED] indicated that the Appellant is confused about when to take her medications and the correct dosage and they organize her pill planner for her. [REDACTED] stated the Appellant can place her pills into her mouth.

Based upon the documentation of the March 2022 PAS and the testimony presented by her representatives, the Appellant was correctly assessed in the areas of bathing, transferring, walking and medication administration. At the time of the evaluation, the Appellant was not receiving physical assistance with getting into or out of the shower or physical assistance with bathing. Although testimony indicated that the Appellant has been receiving assistance getting into and out of the shower due to a recent fall, the Appellant was correctly assessed as bathing with prompting/supervision in March 2022.

[REDACTED] testified that the Appellant is able to transfer and walk with the assistance of furniture, walls and a walker. Hands on physical assistance to transfer or walk were not reported, therefore, the Appellant was correctly assessed as transferring and walking with supervision and the use of an assistive device.

The Appellant has the ability to physically administer her medications once her pill planner is organized and she is reminded of when to take her medications. The Appellant was correctly assessed as administering medications with prompting/supervision.

Credible testimony from the Appellant's caregiver indicated that the Appellant would require physical assistance to vacate in an emergency and a deficit will be awarded in this area. Testimony

from [REDACTED] confirmed that the Appellant receives physical assistance with eating and dressing and deficits will be awarded in this area. The Appellant was found to have bladder accidents several times per week and a deficit will be awarded in bladder continence.

Whereas additional deficits were found in vacating in an emergency, eating, dressing and bladder continence, the Appellant continues to meet the medical criteria to receive services under the Aged and Disabled Waiver Program.

CONCLUSIONS OF LAW

- 1) An individual must have five functional deficits as derived from the PAS assessment tool to qualify medically for the Aged and Disabled Waiver Program.
- 2) The Appellant received a deficit in grooming on the March 2022 PAS.
- 3) Based upon the information presented, the Appellant was found to be demonstrating functional deficits in vacating in an emergency, eating, dressing and bladder continence.
- 4) With five functional deficits, the Appellant continues to meet the medical criteria to receive Aged and Disabled Waiver services.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to terminate the Appellant's services under the Aged and Disabled Waiver Program. The March 2022 PAS will be updated to reflect deficits in vacating in an emergency, eating, dressing and bladder continence.

ENTERED this 1st day of June 2022.

Kristi Logan
Certified State Hearing Officer