



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

June 22, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1613

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 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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

Cc Tamra Grueser, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1613

**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 June 15, 2022, on an appeal filed May 2, 2022.

The matter before the Hearing Officer arises from the April 15, 2022 decision by the Respondent to terminate the Appellant's benefits under the Aged/Disabled Waiver Medicaid Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services, WVDHHR. Appearing as a witness for the Respondent was Braden Scheick, RN, KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Case Manager, ██████████ Senior Center, and ██████████, the Appellant's daughter. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged/Disabled Waiver Policy Chapters 501.11, 501.11.1, 501.11.2.1 and 501.11.2.2
- D-2 Notice of Decision (Final Termination) dated April 15, 2022
- D-3 Notice of Decision (Potential Termination) dated March 18, 2022
- D-4 Pre-Admission Screening (PAS) completed on April 14, 2022
- D-5 Medical Necessity Evaluation Request signed on January 10, 2022
- D-6 Appellant's Medication List

Appellant's Exhibits:

- A-1 Letter from ██████████, dated May 27, 2022

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) The Appellant is a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits.
- 2) A new Pre-Admission Screening (PAS) was completed for the Appellant on April 14, 2022, in conjunction with his annual assessment (Exhibit D-4).
- 3) The Appellant was determined to be deficient in three functional areas on the PAS: vacating a building, grooming, and dressing.
- 4) The Appellant was notified of the potential termination of his ADW services on March 18, 2022 (Exhibit D-3).
- 5) The Appellant was notified of the final termination of his ADW services on April 15, 2022 (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services Policy Manual Chapters 501.11 and 501.11.1 address medical criteria for the ADW Program (Exhibit D-1).

Chapter 501.11 of the Manual states:

The Utilization Management Contractor (UMC) is the entity that is responsible for conducting medical necessity assessments to confirm an applicant's medical eligibility for waiver services. The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate Service Level that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

Chapter 501.11.1 of the Manual states 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)
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

Aged/Disabled Waiver Medicaid Policy states that an individual must have five deficits as described on his PAS assessment to qualify medically for the ADW Program. The Appellant received three deficits on his April 2022 PAS in the areas of vacating a building, grooming, and dressing.

During the hearing, the Appellant's witnesses contended that he should have received additional deficits in the areas of bathing, eating, walking, transferring, and continence of bladder.

The Appellant's witnesses testified that he has problems with dizziness and balance, which affects his ability to ambulate. The Appellant primarily ambulates and transfers in his residence without physical assistance; however, he requires physical assistance when he is outside of the home. The Appellant normally transfers by scooting and holding onto items in his residence; however, his daughter assists him with transfers when he is weak from dialysis. Based on this information, no

deficit can be awarded for physical assistance with walking and transferring, as the Appellant primarily performs these activities unassisted.

The Appellant has experienced urinary incontinence at night; however, his witnesses indicated that the primary cause of the accidents is his inability to get out of bed and reach the bathroom in time. No information was provided concerning the frequency of the accidents. The Appellant's case manager indicated that he is getting a bedside toilet to alleviate this problem. Testimony reveals that the Appellant's nighttime bladder accidents occur primarily due to the distance of the bathroom from his bed, and it is believed that a bedside toilet would alleviate the problem. Therefore, no deficit can be awarded for incontinence.

The Appellant's case manager testified that the Appellant has some hearing loss, and the PAS assessment was completed via telephone. She indicated that the Appellant did not fully comprehend the reason for the assessment and may have overstated his abilities because he feared that he would be placed in a nursing home.

The Appellant, who undergoes kidney dialysis three times per week and has an above-the-knee leg amputation, has been unable to shower for several months due to an issue with his port. The Appellant takes sponge baths and indicated that he cannot wash certain areas of his body because he cannot bend. In addition, the Appellant's case manager cited his dizziness and balance issues as a hindrance to bathing. During the PAS assessment, the Appellant told the evaluating nurse that he took showers and did not require assistance with bathing. However, it is noteworthy that he was awarded a deficit on the 2022 PAS for physical assistance with dressing after citing a specific need for help in putting on socks and shoes.

The Appellant's daughter testified that she prepares the Appellant's meals and pre-cuts his meat. The Appellant testified that he is unable to cut up his food due to arthritis. Tamra Grueser, Registered Nurse with the Bureau of Senior Services, testified that a diagnosis of significant arthritis was listed on the Appellant's 2021 PAS, but was not included on his 2022 PAS. The Appellant reported during the 2022 PAS that he has arthritis in his hand, and over-the-counter arthritis medication was noted on the assessment. The Appellant had reported left hand pain and difficulty cutting foods on his 2021 PAS, but told the evaluating nurse that he had the ability to cut food during the 2022 PAS.

Based on information provided during the hearing, the Appellant is awarded deficits in the functional areas of bathing and eating. The Appellant reported being unable to cut food in 2021 due to significant arthritis and it is reasonable to believe that the Appellant is still unable to cut food due to this condition. The Appellant was awarded a deficit in the functional area of dressing on the 2022 PAS based on difficulties with putting on socks and shoes. Therefore, it is reasonable to believe that he would have difficulty washing parts of his body without physical assistance due to the same bending motion required to complete the tasks.

It is unclear whether the Appellant understood all questions asked during the telephone PAS interview, but he testified that he had difficulty hearing during the assessment. It is reasonable to believe that a telephone interview, as opposed to the typical in-person assessment, could have posed challenges to his level of comprehension.

Based on information provided during the hearing, the Respondent's proposal to terminate ADW benefits cannot be affirmed.

CONCLUSIONS OF LAW

- 1) An individual must receive five deficits in functional areas of the PAS assessment to qualify medically for the Aged/Disabled Waiver Medicaid Program.
- 2) The Appellant received three deficits on his April 2022 PAS as part of his reassessment for the program.
- 3) Based on information/documentation provided during the hearing, two additional deficits are awarded to the Appellant in the functional areas of bathing and eating.
- 4) The addition of two deficits brings the Appellant's total number of deficits to five.
- 5) The Appellant has met medical criteria for the ADW Program.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Respondent's proposal to terminate the Appellant's benefits under the Aged/Disabled Waiver Medicaid Program.

ENTERED this 22nd Day of June 2022.

Pamela L. Hinzman
State Hearing Officer