



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
Telephone: (304) 352-0805 Fax: (304) 558-1992**

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Inspector General**

August 18, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 22-BOR-1791

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Tamra Grueser, BoSS
Tamara Yoxheimer, Central WV Aging Services
Anthony Dearco, Central WV Aging Services

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1791

**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 August 03, 2022.

The matter before the Hearing Officer arises from the June 22, 2022 determination by the Respondent to terminate the Appellant's Medicaid Aged and Disabled Waiver (ADW) Program benefits.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services (BOSS). Appearing as a witness for the Department was Braden Scheick, RN, KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Department of Health and Human Resources (WVDHHR) Bureau of Medical Services (BMS) Aged & Disabled Waiver Services Policy Manual §§ 501.9.1, 501.9.1.2
- D-2 Notice of Decision: Potential Termination, dated September 23, 2020
- D-3 Notice of Decision: Final Termination, dated October 08, 2020
- D-4 Pre-Admission Screening (PAS) Summary dated September 23, 2020, and PAS Summary submitted on September 23, 2020

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) The Appellant was a participant in the Aged and Disabled Waiver (ADW) Program and received Personal Attendant (PA) services.
- 2) On June 06, 2022, KEPRO RN, Braden Scheick (Mr. Scheick), completed a Pre-Admission Screening (PAS) with the Appellant by telephone. (Exhibit D-2)
- 3) The Appellant and Mr. Scheick were present during the completion of the PAS. (Exhibit D-2)
- 4) The Appellant was found to have one (1) functioning deficit in the area of *vacate a building*.
- 5) On June 07, 2022, KEPRO issued a notice advising the Appellant that he was found to be ineligible for the ADW program due to lacking deficits in at least five (5) critical areas. (Exhibit D-4)
- 6) The June 07, 2022 notice advised the Appellant of potential termination of ADW services due to unmet medical eligibility and provided a two-week deadline for submitting additional medical information for consideration. (Exhibit D-4)
- 7) On June 21, 2022, after additional documentation was received from the Appellant's physician, the Appellant was awarded additional deficits in the functioning areas of *bathing* and *dressing*. A Notice of Decision: Final Termination was issued to the Appellant advising he no longer met the medical eligibility criteria in at least five (5) critical areas as required by policy for participation in the ADW program. (Exhibit D-5)
- 8) The Appellant's Representative argued additional deficits should have been awarded in the areas of *eating*, *walking*, *transferring*, and *grooming*.
- 9) The Appellant is a Level 1, self/prompting, in the area of *eating*. (Exhibit D-2)
- 10) The Appellant is a Level 2, supervised/assistive device, in the area of *walking*. (Exhibit D-2)
- 11) The Appellant is a Level 2, supervised/assistive device, in the area of *transferring*. (Exhibit D-2)
- 12) The Appellant is a Level 1, self/prompting, in the area of *grooming*. (Exhibit D-2)

APPLICABLE POLICY

Bureau for Medical Services (BMS) Provider Manual, Chapter 501: Aged and Disabled Waiver (ADW), § 501.9 Medical Eligibility provides, in part:

The Utilization Management Contractor (UMC) is the entity that is responsible for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

BMS Manual § 501.9.1 Service Level Criteria provides in part:

An individual must have five deficits as described on the Pre-Admission Screening Form (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 Deficits	
#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 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 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 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 for 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.	

BMS Manual §501.9.1.1 Service Level Criteria provides, in part:

Section	Description of Points
#23	Medical Conditions/Symptoms – 1 point for each (can have total of 12 points)
#24	Decubitus – 1 point
#25	1 point for b., c., or d.

#26	<p>Functional Abilities</p> <p>Level 1 – 0 points</p> <p>Level 2 – 1 point for each item a through i.</p> <p>Level 3 – 2 points for each item a through m i (walking) must be at Level 3 or Level 4 in order to get points for j (wheeling)</p> <p>Level 4 – 1 point for a, 1 point for e, 1 point for f, 2 points for g through m</p>
#27	Professional and Technical Care Needs – 1 point for continuous oxygen.
#28	Medication Administration – 1 point for b. or c.
#34	Dementia – 1 point if Alzheimer’s or other dementia
#35	Prognosis – 1 point if Terminal

DISCUSSION

Pursuant to policy, Applicants for the ADW program must be medically eligible for a nursing home level of care and in need of services. KEPRO, the Utilization Management Contractor (UMC) for the Bureau for Medical Services (BMS), is responsible for conducting medical necessity evaluations to confirm an individual’s medical eligibility for waiver services. ADW 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.

Due to the COVID-19 Pandemic, the Appellant verbally consented to complete the June 06, 2022 PAS via telephone. Those present on the call were: [REDACTED], the Appellant, and Mr. Braden Scheick, RN, with KEPRO. At the time of the PAS, the Appellant was found to have one (1) functioning deficit in the area of *vacate a building*. On June 07, 2022, KEPRO issued a notice advising the Appellant that he was found to be ineligible for the ADW program due to lacking deficits in at least five (5) critical areas. The June 07, 2022 notice advised the Appellant of the potential termination of ADW services due to unmet medical eligibility and provided a two-week deadline for submitting additional medical information for consideration. On June 21, 2022, after

additional documentation was received from the Appellant's physician, the Appellant was awarded additional deficits in the functioning areas of *bathing* and *dressing*. A Notice of Decision: Final Termination was issued to the Appellant advising the Appellant he no longer met the medical eligibility criteria in at least five (5) critical areas as required by policy for continued eligibility for the ADW program. The Appellant and the Appellant's Representative contested the Respondent's denial and argued that additional PAS deficits should have been awarded in the areas of *eating*, *walking*, *transferring*, and *grooming*. The Respondent had to prove by a preponderance of evidence that the Appellant did not present with deficits in at least five (5) functioning areas at the time of the PAS.

To receive a deficit in the area of *eating*, the Appellant had to be assessed as Level 2 or higher and require physical assistance to get nourishment at the time the PAS was completed. The Appellant's Representative argued that because the Appellant does not have the ability to shop for food, and because he cannot stand for long periods of time in order to prepare meals, an additional deficit should have been awarded. ADW policy requires an assessment of at least a Level 2, physical assistance to get nourishment, not for preparation. The evidence established that the Appellant did not require physical assistance to receive nourishment. As reflected on the PAS, the Appellant has the physical ability to cut his food, can feed himself with normal utensils, and does not require the use of adaptive equipment in order to receive proper nourishment. Because the Appellant did not require physical assistance to gain nourishment at the time of the PAS, a deficit could not be awarded in the area of *eating*.

To be awarded a deficit in the area of *walking* and *transferring*, the Appellant had to be assessed as Level 3 or higher and require one or two-person assistance in the home. The evidence established that the Appellant was assessed as Level 2, without hands on assistance, but does report the use of an assistive device and supervision. The Appellant's Representative testified that because the Appellant suffers with cellulitis and severe knee pain, he is unstable even when walking with assistive devices, is at risk of falling, suffers with leg stiffness, and experiences a loss of feeling in his feet causing the Appellant to endure wounds without realization. The evidence established that the Appellant was assessed as Level 2 and was physically able to independently transfer and walk. Based on this information, no deficit can be awarded for physical assistance with *walking* and *transferring*, as the Appellant primarily performs these activities unassisted.

To receive a deficit in the area of *grooming*, the Appellant had to be assessed as a Level 2 or higher and require physical assistance in the area of grooming. The Respondent assessed the Appellant as a Level 1, no assistance needed, on the June 2022 PAS. At the time of the PAS, the Appellant reported being able to wash and brush hair without assistance, being able to perform finger and toenail trimming without assistance and having the ability to perform oral and skin care to all areas without assistance. Testimony provided by Mr. Scheick, RN with KEPRO, provided that because the Appellant was now reporting having the ability to perform finger/toenail care without assistance, he alerted the Appellant of the change as compared to the previous PAS. Mr. Scheick further testified the Appellant still denied needing assistance in the area of *grooming*. The Appellant's Representative testified that because the Appellant cannot stand for long periods of time, assistance is provided by the Appellant's PA who aids in retrieving the Appellant's personal care items so that the Appellant may groom himself while in a sitting position. Policy provides that individuals that are able to complete grooming independently, even from a seated position, are assessed as a Level 1. As the Appellant was assessed as a Level 1 and no evidence was entered

to establish that he required physical assistance to complete grooming tasks, a deficit could not be awarded in this area.

After review of the testimony and evidence presented, the Appellant did not demonstrate that he should be awarded any additional functional deficits. Because the Appellant qualifies for three (3) functional deficits, which is below the five (5) deficit threshold to establish continued medical eligibility, the Appellant no longer meets the medical criteria to continue receiving services under the Aged and Disabled Waiver Program.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid Aged and Disabled Waiver (ADW) program, the applicant must demonstrate deficits in at least five (5) functioning areas outlined on the Pre-Admission Screening (PAS).
- 2) The Appellant was awarded deficiencies in the areas of *vacate a building, bathing, and dressing*, for a total of three (3) functional deficits at the time of the June 22, 2022 PAS.
- 3) The preponderance of evidence verified that the Appellant did not demonstrate five (5) functional deficits on the PAS.
- 4) Because the Appellant does not have five (5) functional deficits, the Appellant no longer meets the medical eligibility criteria to continue receiving services under the Aged and Disabled Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's termination of the Appellant's medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) program.

ENTERED this 18th day of August 2022.

Angela D. Signore
State Hearing Officer