



**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**

August 11, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1855

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-1855**

**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 10, 2022, on an appeal filed July 11, 2022.

The matter before the Hearing Officer arises from the July 1, 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 a witness for the Appellant was ██████████, care provider, PPL. 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 (Potential Termination) dated June 21, 2022
- D-3 Notice of Decision (Final Termination) dated July 1, 2022
- D-4 Pre-Admission Screening (PAS) completed on July 1, 2022
- D-5 Medical Necessity Evaluation Request signed on March 31, 2022
- D-6 Appellant's Medication List

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 July 1, 2022, in conjunction with her annual assessment (Exhibit D-4).
- 3) The Appellant was determined to be deficient in four (4) functional areas on the PAS: vacating a building, bathing, dressing, and grooming
- 4) The Appellant was notified of the potential termination of her ADW services on June 21, 2022 (Exhibit D-2).
- 5) The Appellant was notified of the final termination of her ADW services on July 1, 2022 (Exhibit D-3).
- 6) During the hearing, the Respondent conceded one (1) additional deficit to the Appellant in the functional area of bowel continence.

### **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.<br>f. | Continence, Bowel<br>Continence,<br>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<br>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 (5) deficits as described on the PAS assessment to qualify medically for the ADW Program. The Appellant received four (4) deficits on her July 2022 PAS in the areas of vacating a building, bathing, dressing, and grooming.

The Appellant, who testified that she has terminal cancer and several other medical issues, takes stool softeners and laxatives for constipation. As a result, she experiences diarrhea and bowel accidents about three to five times per week.

Following the Appellant's testimony and a review of her medication list, the Respondent conceded one (1) additional deficit to the Appellant in the functional area of bowel continence, bringing the Appellant's total number of functional deficits to five (5).

The Appellant testified that she requires physical assistance with transferring into the shower and walking, but those areas will not be addressed since the addition of one (1) conceded deficit renders her medically eligible for the Aged/Disabled Waiver Program. Tammy Grueser, Registered Nurse with the Bureau of Senior Services, advised the Appellant to discuss these areas with her case manager so that her level of care could be properly assessed.

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

### **CONCLUSIONS OF LAW**

- 1) An individual must receive five (5) deficits in functional areas of the PAS assessment to qualify medically for the Aged/Disabled Waiver Medicaid Program.
- 2) The Appellant received four (4) deficits on her July 2022 PAS as part of her reassessment for the program.
- 3) Based on information/documentation provided during the hearing, the Respondent conceded one (1) additional deficit.
- 4) The addition of one (1) deficit brings the Appellant's total number of deficits to five (5).
- 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 11th Day of August 2022.**

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**Pamela L. Hinzman  
State Hearing Officer**

