



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Jeffrey H. Coben, MD  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

May 16, 2023



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1337

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,

**Tara B. Thompson, MLS**  
State Hearing Officer  
Member, State Board of Review

Encl: Decision Recourse  
Form IG-BR-29  
CC: Tamra Grueser, Bureau of Senior Services

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

██████████,

**Appellant,**

v.

**Action Number: 23-BOR-1337**

**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 March 29, 2023.

The matter before the Hearing Officer arises from the Respondent's January 6, 2023 decision to deny the Appellant medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness on behalf of the Respondent was Debra Lemasters (hereafter Nurse Lemasters), RN, KEPRO. All witnesses were sworn in and the following documents were admitted into evidence.

**Department's Exhibits:**

None

**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 January 6, 2023, the Respondent issued a notice advising the Appellant's medical eligibility for the Aged and Disabled Waiver (ADW) program was denied because the Pre-Admission Screening (PAS) form failed to indicate the presence of at least five (5) of the critical areas, as mandated for ADW program eligibility.
- 2) The January 6, 2023 notice reflected that the Pre-Admission Screening (PAS) form indicated the presence of deficits in the area of *grooming*.
- 3) On December 14, 2022, Nurse Lemasters completed a PAS with the Appellant and [REDACTED], the Appellant's representative.
- 4) During the completion of the PAS, all diagnoses listed on the Medically Necessity Evaluation Request (MNER) were reviewed with [REDACTED] and he agreed.
- 5) The Appellant has diagnoses including osteoarthritis in his hands.
- 6) During the PAS, the Appellant reported a diagnosis of diabetes.
- 7) During the PAS, [REDACTED] reported a diagnosis of dementia.
- 8) The Appellant did not have decubitus.
- 9) At the time of the PAS, the Appellant was able to vacate the building with supervision during an emergency event.
- 10) At the time of the PAS, the Appellant had Level 1 functioning in the areas of *eating*, *bathing*, and *dressing* and can complete tasks in these areas independently or with prompting.
- 11) At the time of the PAS, the Appellant had Level 1 functioning in the areas of bladder and bowel *continence*.
- 12) At the time of the PAS, the Appellant had Level 2 functioning in *grooming* and can complete tasks in this area with physical assistance.
- 13) At the time of the PAS, the Appellant had Level 2 functioning in *orientation* and is intermittently disoriented.
- 14) At the time of the PAS, the Appellant had Level 2 functioning in *transferring* and *walking* and can complete tasks in these areas with supervision or assistive devices.
- 15) At the time of the PAS, the Appellant was unable to reach to wash his feet and required assistance from [REDACTED].

- 16) At the time of the PAS, the Appellant had continence of bladder and bowel.
- 17) At the time of the PAS, the Appellant did not use incontinent supplies.
- 18) At the time of the PAS, the Appellant was able to transfer without the hands-on assistance of one or two persons.
- 19) At the time of the PAS, the Appellant did not use a wheelchair.
- 20) At the time of the PAS, the Appellant did not require continuous oxygen.
- 21) At the time of the PAS, the Appellant could administer his medications with prompting and supervision.

### **APPLICABLE POLICY**

#### **Bureau for Medical Services (BMS) Manual § 501.8 provides in pertinent parts:**

To be eligible for the ADW program, applicants must be approved as medically eligible for a nursing home level of care and in need of services.

#### **BMS Manual §§ 501.11 and 501.11.1 provide in pertinent part:**

The UMC is the entity that is responsible for conducting medical necessity assessments to confirm an applicant's medical eligibility for waiver services.

To be eligible for the ADW program, the PAS had to describe five deficits as reflected in the following PAS elements:

- #24: Decubitus; Stage 3 or 4
- #25: In the event of an emergency, the individual is mentally unable or physically unable to vacate a building.
- #26: Functional abilities of an 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. Continence, Bowel: Level 3 or higher; must be incontinent
  - f. 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 ...
- #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 medications

## **DISCUSSION**

The Respondent denied the Appellant's Medicaid ADW eligibility because the PAS failed to establish the presence of deficits in five areas. The Appellant's representative contended the Appellant should have received additional deficits. As indicated on the notice, the Appellant had a deficit in *grooming*. During the hearing, the Appellant's representative testified that the Appellant's functioning has declined since the PAS was completed. The Board of Review can only consider the information that was relevant at the time the PAS was completed. Testimony provided during the hearing regarding the Appellant's decline in functioning after the PAS was not relevant to the Appellant's functioning ability at the time of the PAS and could not be considered.

To be eligible for the Medicaid ADW program, the PAS had to reveal the Appellant had five deficits as described by the policy. The Respondent had to prove by a preponderance of the evidence that the Appellant did not have five deficits at the time of the PAS.

The Respondent must rely on the information provided during the PAS to determine the Appellant's eligibility for the ADW program. The preponderance of the evidence revealed the Appellant's representative participated in the PAS and had the opportunity to provide details regarding the Appellant's functioning at that time. No evidence was submitted to indicate that the Appellant's representative's provided information on the PAS was recorded inaccurately during the assessment.

The PAS indicated that the Appellant did not have a decubitus at the time of the PAS. No evidence was submitted to establish that the Appellant should have received a deficit in *decubitus*.

To receive a deficit in *vacating a building*, the Appellant had to be physically or mentally unable to vacate a building during an emergency event. The PAS reflected that the Appellant was able to vacate the building during an emergency with supervision. According to the policy, vacating with supervision is not considered a deficit. During the hearing, the Appellant's representative provided testimony regarding injuries sustained by the Appellant when he fell through a window due to low blood sugar. The Appellant's representative testified that instead of calling for medical help during the emergency, he called [REDACTED]. The Appellant's representative asserted that if he had been cut badly, he could have bled to death. The Board of Review lacks the authority to make policy changes or exceptions. Unfortunately, the policy only provides a deficit eligibility category for vacating a building during an emergency event, not for calling for assistance during an emergency event. Sufficient evidence was not submitted to establish that at the time of the

PAS, the Appellant was physically or mentally unable to vacate a building during an emergency event.

To receive a deficit in the areas of *eating* and *dressing*, the Appellant had to be assessed as Level 2 and require physical assistance to get nourishment. The Appellant was assessed as Level 1 functioning in *eating* and *dressing*. The PAS narrative was consistent with the Appellant's ability to independently eat and dress with prompting. During the hearing, the Appellant's representative testified that the Appellant is unable to button his clothing. Although [REDACTED] was present during the PAS, there was no evidence that this information was reported during the PAS.

To receive a deficit in *bathing*, the Appellant had to be assessed as Level 2 and require physical assistance or more. The Appellant was assessed as Level 1 functioning in *bathing*, indicating the Appellant was capable of independently completing tasks in *bathing* with prompting. The PAS narrative indicated that the Appellant is unable to wash his feet and that the Appellant's representative will wash the Appellant's feet. This narrative description is inconsistent with Level 1 functioning. During the hearing, the Appellant's representative testified that the Appellant required physical assistance washing his feet and hair. The preponderance of the evidence revealed that the Appellant required physical assistance to complete *bathing* tasks at the time of the PAS and should have received a deficit in this area.

To receive a deficit in *continence*, the Appellant had to be assessed as Level 3 or higher, indicating the Appellant was incontinent. The PAS narrative indicated the Appellant and his representative reported he was continent at the time of the PAS and did not require the use of incontinence supplies. During the hearing, the Appellant's representative testified that the Appellant does urinate often in his pants but does not admit it due to embarrassment. [REDACTED] testimony contradicts what he reported during the PAS. Although [REDACTED] was present during the PAS, there was no evidence that this information was reported during the PAS.

To receive a deficit in orientation, the Appellant had to be assessed as Level 3 or higher, totally disoriented, or comatose. The PAS narrative indicated that the Appellant has a diagnosis of dementia and was oriented during the PAS. No evidence was submitted to establish that a deficit in *orientation* should have been awarded.

The Appellant was assessed as Level 2 functioning in *transferring* and *walking*. The PAS narrative was consistent with the Appellant's ability to transfer and walk independently with the use of supervision or an assistive device. The evidence did not indicate that the Appellant required hands-on assistance while transferring or walking at the time of the PAS.

The PAS indicated that the Appellant is capable of independently obtaining medications from his bottles and consuming them independently. The PAS narrative indicated that the Appellant could prepare and administer his daily injections. The Appellant's representative testified that he administers all the Appellant's medication except his daily injections. [REDACTED] testimony contradicts what was reported during the PAS. No evidence was submitted to establish that the Appellant was incapable of administering his medications at the time of the PAS.

### **CONCLUSIONS OF LAW**

- 1) The policy requires the presence of five deficits to be eligible for the ADW program.
- 2) The preponderance of the evidence revealed that at the time of the PAS, the Appellant had deficits in *grooming* and *bathing*.
- 3) Because the Appellant did not have deficits in five areas at the time of the PAS, the Respondent correctly denied the Appellant's eligibility for the ADW program.

### **DECISION**

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

Entered this 16<sup>th</sup> day of May 2023.

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**Tara B. Thompson, MLS**  
State Hearing Officer