



**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**

March 1, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1016

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Tamara Grueser, RN, BoSS
[REDACTED]

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1016

**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 February 28, 2023.

The matter before the Hearing Officer arises from the November 22, 2022 decision by the Respondent to deny Aged and Disabled Waiver (ADW) program services.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Rebecca Monroe, RN, KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §§501.11.1 and 501.11.2.1
- D-2 Notice of Potential Denial: 2 week notice to submit addl doc, dated November 7, 2022
- D-3 Notice of Decision: Final Denial, dated November 22, 2022
- D-4 Aged and Disabled Waiver Medical Necessity Evaluation Request, dated September 21, 2022
- D-5 Pre-Admission Screening Form, submit date November 22, 2022
- D-6 PAS Summary, dated November 22, 2022
- D-7 PAS Summary, dated November 18, 2022
- D-8 Medication List, dated November 3, 2022

Appellant's Exhibits:

The Appellant submitted a statement from [REDACTED], dated November 17, 2022, but it was not entered into the record.

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 applied for Aged and Disabled Waiver (ADW) program services and underwent a Pre-Admission Screening (PAS) on November 3, 2022, as a part of the application process.
- 2) RN Rebecca Monroe, the assessing nurse, determined that the Appellant had three substantial deficits in the areas of *bathing, grooming, and dressing*. (Exhibit D-5)
- 3) The Appellant has a diagnosis of Bipolar II disorder and bowel incontinence. (Exhibits D-4 and D-5)
- 4) On November 7, 2022, the Respondent sent the Appellant a notice of potential denial. (Exhibit D-2)
- 5) Additional documentation was submitted to the Respondent indicating that the Appellant also has a diagnosis of mental retardation.
- 6) The Appellant underwent the PAS without any assistance. (Exhibit D-5)
- 7) On November 22, 2022, the Respondent sent the Appellant a notice of denial stating that deficiencies were found in the areas of bathing, grooming, and dressing. (Exhibit D-3)
- 8) The Appellant established an additional deficit in the area of continence at the hearing.

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

The Medicaid Aged/Disabled Waiver program requires individuals to demonstrate five functional deficits in the designated life areas on the Pre-Admission Screening (PAS) assessment for program eligibility. On November 3, 2022, the Appellant underwent a PAS assessment with Rebecca Monroe, RN, KEPRO. At the conclusion of the assessment, RN Monroe determined that the Appellant had substantial functional deficits in the areas of *bathing*, *grooming*, and *dressing*. On November 7, 2022, the Respondent sent the Appellant a notice of potential denial advising that he had two weeks to submit any additional documentation. On November 22, 2022, the Respondent sent a notice of final denial stating that the Appellant failed to meet the medical requirements of the program because he failed to demonstrate the necessary amount of functional deficits.

The Appellant appealed the Respondent's decision stating that he should have been awarded additional deficits in the areas of *medication administration* and *continence*.

The Appellant was assessed as a Level 1 (prompting/supervision) in medication administration. During the PAS, the Appellant reported that he can retrieve his medications from the packaging and was able to place them in his mouth and consume them with a drink, although he indicated that he forgets to take his medication sometimes and that reminders would be helpful. The testimony provided did confirm that RN Monroe correctly assessed the Appellant as a Level 1 in this area. However, in order to receive a functional deficit in the area medication administration, an individual must be incapable of administering his/her own medication. No additional functional deficit was established in the area of medication administration.

The Appellant was assessed as a Level 1 (continent) in bladder and bowel continence. The Appellant reported during the PAS that he had occasional urinary accidents with the last one being a year ago, and had issues with bowel incontinence with the last episode in September 2022. RN Monroe testified that in order to be assessed as a substantial deficit, the incontinence must be at least once in a month. The Appellant testified that the reason he did not indicate he was incontinent during the PAS was that he was too embarrassed to reveal his incontinence issues to RN Monroe. During the hearing both the Appellant and his witness provided credible testimony that the Appellant regularly has “accidents” at work and at night. Although RN Monroe correctly assessed the Appellant’s incontinence as a Level 1 based upon the information he provided during the PAS assessment, a functional deficit in the area of continence was established at the hearing based on the credible testimony provided, the Appellant’s diagnoses of mental retardation and bowel incontinence, and the fact that he underwent the PAS assessment without any assistance.

CONCLUSIONS OF LAW

- 1) An individual must have five functional deficits as derived from the PAS assessment in order to qualify medically for the ADW program.
- 2) The Appellant received functional deficits in the areas of *bathing, grooming, and dressing*.
- 3) Based on information provided during the hearing, an additional deficit in the area of *continence* was established.
- 4) With four functional deficits established, the Appellant does not meet program eligibility for the ADW program services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant’s application for services under the Aged and Disabled Waiver Program.

ENTERED this 1st day of March.

Lori Woodward
Certified State Hearing Officer