



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

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

August 2, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 23-BOR-2002

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Bureau of Senior Services

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

[REDACTED],

Appellant,

v.

Action Number: 23-BOR-2002

**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 [REDACTED]. 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 1, 2023, on an appeal filed June 21, 2023.

The matter before the Hearing Officer arises from the June 12, 2023, decision by the Respondent to terminate services under the Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, Bureau of Senior Services. Appearing as a witness for the Respondent was Rebecca Monroe, RN, KEPRO. The Appellant was self-represented. Appearing as a witness for the Appellant was [REDACTED], Case Manager, Americare. The 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
- D-2 Notice of Decision: Final Termination dated June 12, 2023
- D-3 Notice of Potential Termination dated May 24, 2023
- D-4 Pre-Admission Screening (PAS) dated May 24, 2022
- D-5 PAS Summary dated May 22, 2023
- D-6 PAS Summary dated May 24, 2022
- D-7 Aged and Disabled Waiver RN Assessment dated May 9, 2023
- D-8 PAS dated May 22, 2023
- D-9 Medication List

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 recipient of services under the Aged and Disabled Waiver (ADW) Program.
- 2) The Appellant underwent an annual assessment of medical eligibility on May 22, 2023.
- 3) The PAS completed on May 22, 2023, revealed that the Appellant had functional deficits in bathing, dressing and grooming (Exhibit D-8).
- 4) The Respondent issued a Notice of Termination on June 12, 2023, advising the Appellant that she was no longer eligible for ADW services because she failed to have at least five deficits as derived from the PAS (Exhibit D-2).
- (5)

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 meal 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 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

Policy stipulates that medical eligibility for the ADW Program is determined by a medical evaluation using the PAS assessment tool. An individual must have at least five (5) functional deficits as derived from the PAS to qualify for ADW services. The Appellant received three (3) deficits in bathing, dressing and grooming on the May 2023 PAS. The Appellant contested not receiving deficits in the areas of vacating in an emergency, eating, bladder continence and walking.

Vacating

The Appellant was assessed as requiring supervision to vacate her home in an emergency. The Appellant and her witness, [REDACTED], contended that the Appellant could not vacate in an emergency due to slow ambulation, poor balance and frequent dizzy spells. Based upon the testimony of the Appellant and her witness, the Appellant would be unable to vacate in an emergency without assistance. The Appellant will be awarded a deficit in the area of vacating in an emergency.

Eating

The Appellant was assessed as a Level 1 in eating - independent - based upon the information provided by the Appellant during the May 2023 evaluation. The Appellant testified that she is able to cut soft foods with a fork but needs assistance with firmer foods such as meat due to arthritis in her hands. The Appellant stated she may not have expressed herself clearly to the assessing nurse during the evaluation. A medical assessment completed by the Appellant's case management agency on May 9, 2023, noted that the Appellant's bilateral grip strength was poor and that she experiences hand tremors (Exhibit D-7). Credible testimony from the Appellant and the documentation from the case management agency supports that the Appellant requires assistance with eating. The Appellant will be awarded an additional deficit in the area of eating.

Continence

The Appellant was assessed as a Level 2 in bladder continence – occasionally incontinent. During the May 2023 assessment, the Appellant reported bladder accidents occurring less than three times per week. The Appellant testified to having a brief respite from bladder accidents due to a change in her medications, but reported shortly after the May 2023 evaluation, she began experiencing daily bouts of bladder incontinence. The Appellant will be awarded an additional deficit in the area of bladder continence.

Walking

The Appellant testified that after her knee replacement last year, she was advised to walk as much as possible by her physician. The Appellant testified that she still uses a walker to ambulate, but because her apartment is small, she is able to walk using the aid of her furniture and walls. [REDACTED] testified that the Appellant has arranged the furniture in her home so that she is able to navigate using the furniture and walls. To receive a deficit in walking, the Appellant would require the physical assistance of another person to ambulate. Testimony and documentation revealed that the Appellant can walk with the use of a walker and while holding onto furniture. Therefore she was correctly assessed as a Level 2 – assistive device – in the area of walking.

Whereas three additional deficits were awarded to the Appellant in vacating in an emergency, eating and bladder continence, the Appellant continues to meet medical eligibility criteria for services under the Aged and Disabled Waiver Program.

CONCLUSIONS OF LAW

- 1) An individual must have five functional deficits as derived from the PAS assessment tool to qualify medically for the Aged and Disabled Waiver Program.
- 2) The Appellant received deficits in bathing, dressing and grooming on the May 2023 PAS.
- 3) Based upon the information presented, the Appellant was found to be demonstrating additional deficits in vacating in an emergency, eating and bladder continence.
- 4) With six functional deficits, the Appellant continues to meet medical eligibility criteria for services under the Aged and Disabled Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to terminate the Appellant's services under the Aged and Disabled Waiver Program. The Appellant's May 22, 2023, PAS will be updated to reflect additional deficits in vacating in an emergency, eating and bladder continence.

ENTERED this 2nd day of August 2023.

Kristi Logan
Certified State Hearing Officer