



January 13, 2026

RE: [REDACTED] v. WV DoHS/BMS
ACTION NO.: 25-BOR-3434

Dear Ms. [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 HUMAN SERVICES (DoHS). These same laws and regulations are used in all cases to ensure 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
Certified State Hearing Officer
Member, State Board of Review

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

cc: Connie Sankoff, Bureau of Senior Services

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

████████████████████

Appellant,

v.

Action Number: 25-BOR-3434

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR MEDICAL SERVICES,**

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on January 16, 2026.

The matter before the Hearing Officer arises from the Respondent’s decision on October 7, 2025, to deny the Appellant’s medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) program.

At the hearing, the Respondent appeared by Connie Sankoff, RN, Bureau of Senior Services (BoSS). Appearing as a witness for the Respondent was Tammy Skaggs, RN, Acentra. The Appellant was represented by ██████████ her mother. All witnesses were placed under oath, and the following documents were admitted into evidence.

Department’s Exhibits:

- D-1 Pre-Admission Screening (PAS)
- D-2 PAS Summary
- D-3 Potential Denial Notice, dated September 22, 2025
- D-4 ██████████ Medicine Letter, by ██████████ D.O., F.A.A.P, dated October 7, 2025
- D-5 Notice of Decision, dated October 7, 2025

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) On September 22, 2025, a Pre-Admission Screening (PAS) was completed via telephone by [REDACTED], to assess the Appellant's eligibility for the Medicaid Aged and Disabled Waiver (ADW) program (Exhibit D-1).
- 2) The Appellant's mother provided information to Nurse [REDACTED] (Exhibit D-1).
- 3) The PAS indicated the presence of developmental delay, genetic syndrome, and an intellectual disability diagnosis.
- 4) Nurse [REDACTED] did not conduct a physical assessment of the Appellant (Exhibit D-1).
- 5) Nurse [REDACTED] evaluated the Appellant and found four (4) severe functioning deficits in *Eating, Bathing, Grooming, and Administering Medications* (Exhibits D-1 through D-3, and D-5).
- 6) Nurse [REDACTED] did not identify severe deficits for *decubitus, vacating a building, dressing, continence, orientation, transfer, walking, wheeling, or skilled needs* (Exhibits D-1 through D-3, and D-5).
- 7) On September 22, 2025, a *Potential Denial* letter was issued advising the Appellant that she had two (2) weeks to submit additional information to demonstrate that the Appellant had severe deficits in other critical areas (Exhibit D-3).
- 8) On October 7, 2025, the Appellant's primary care physician, [REDACTED] D.O., F.A.A.P (hereafter [REDACTED]) submitted a letter regarding the Appellant's functioning abilities. The letter specified that in the case of a household emergency, the Appellant would be unable to evacuate or respond appropriately without immediate supervision **or assistance** [emphasis added] (Exhibit D-4).
- 9) Dr. [REDACTED] specified that the Appellant required prompts and assistance with *medication administration, grooming, and bathing* (Exhibit D-4).
- 10) On October 7, 2025, a *Notice of Decision* was issued to the Appellant, advising that her medical eligibility for the Medicaid ADW program was denied (Exhibit D-5).
- 11) At the time of the PAS, the Appellant did not have a *decubitus* (Exhibit D-1).
- 12) At the time of the PAS, the Appellant required assistance to *vacate a building* during an emergency (Exhibit D-4).

- 13) At the time of the PAS, the Appellant required assistance *dressing*.
- 14) At the time of the PAS, the Appellant was *continent* of bladder and bowel (Exhibits D-1 through D-3, and D-5).
- 15) At the time of the PAS, the Appellant was *oriented* (Exhibits D-1 through D-3, and D-5).
- 16) At the time of the PAS, the Appellant did not require physical assistance with *transfer, walking, or wheeling* (Exhibits D-1 through D-5).
- 17) At the time of the PAS, the Appellant did not require *skilled needs* in suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations (Exhibits D-1 through D-5).

APPLICABLE POLICY

West Virginia Common Chapters § 710.22 Attendance; Communication; Witnesses; Evidence; and Decision provide:

- A. Attendance – The hearing may be attended by the Appellant and her representative, any employees of the Department who took the action that was allegedly adverse to the Appellant, and a Department representative
- D. Witnesses - Either party may have witnesses testify on the issues in controversy
- I. Admissibility of Evidence – The Hearing Official shall rule on the admissibility of any evidence presented by either party at a hearing. In ruling on the admissibility of evidence, the Hearing Official shall consider the factors of relevancy, reliability, and repetitiveness.
 - (1) Reports resulting from medical examinations shall be admissible without the testimony of the physician or other health care professional who prepared the reports.

Bureau for Medical Services (BMS) Manual § 501.9 ADW Program Eligibility provides that applications for the ADW program must meet all criteria to be eligible for the program, including being approved as medically eligible for nursing home level of care and in need in services.

BMS § 501.12 Medical Eligibility provides that 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.

BMS § 501.12.1 Medical Criteria provides that an individual must have five deficits as described on the PAS to qualify medically for the ADW program as derived from a combination of the following assessment elements on the PAS:

- #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. 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 (must be Level 3 or 4 on walking in 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 their own medications

DISCUSSION

The Respondent denied the Appellant’s application for medical eligibility for the Medicaid ADW program. Pursuant to the PAS, the Appellant was found to have severe deficits in *eating, bathing, grooming, and administering medications*. The Appellant’s representative contested the denial and argued that the Appellant had sufficient deficits to qualify her for the ADW program.

Acentra is the Respondent’s Utilization Management Contractor (UMC) responsible for conducting medical necessity assessments, including the PAS, to confirm an applicant’s medical eligibility for nursing home level of care. The Board of Review lacks the authority to pass judgement on the Respondent’s policy and can only determine if the Respondent acted correctly and followed the policy when determining the Appellant’s eligibility for the ADW program.

Pursuant to the policy, applicants for the Medicaid ADW program must meet all given criteria to be eligible for the program. To establish eligibility, the applicant must have five (5) deficits at the time of the PAS to qualify for medical eligibility for the ADW program. The Respondent bears the burden of proof. To demonstrate that the Appellant was correctly denied medical eligibility for the ADW program, the preponderance of evidence had to establish that the Appellant did not have five qualifying deficits at the time of the PAS.

During the hearing, the Appellant’s representative did not contest that the Appellant did not have a *decubitus*.

Vacating a Building

To receive a deficit in this area, the Appellant had to be physical or mentally unable to vacate a building in the event of an emergency. While the PAS reflected that the Appellant required supervision when vacating, the additional information provided by the Appellant’s primary care physician stated that the Appellant would be unable to evacuate or respond appropriately in an emergency without immediate supervision **or assistance** [emphasis added]. The PAS indicated the presence of developmental delay, genetic syndrome, and an intellectual disability diagnosis.

During the hearing, the Appellant's representative argued that the Appellant's diagnoses affected her functioning.

While vacating with supervision is not an eligible deficit, pursuant to the Appellant's diagnosis and physician record, it can be reasonably concluded that without supervision, the Appellant would require assistance vacating the building during an emergency. During the hearing, an explanation was not provided to establish how the Respondent ruled out the physician's statement regarding the Appellant's requirement for assistance when vacating.

The physician's account of requiring prompts and assistance with *medication administration*, *grooming*, and *bathing* are consistent with the PAS assessment that the Appellant requires physical assistance to complete those tasks. During the hearing, the Respondent did not contest the reliability of the information provided by the Appellant's physician. As the physician has historical knowledge of the Appellant's functioning, the physician's record was given greater weight when determining whether the Appellant should receive a deficit in this area.

The preponderance of evidence revealed that the Appellant was mentally unable to vacate a building during an emergency without assistance or supervision.

Dressing

To receive a deficit in *dressing*, the Appellant had to require physical assistance to dress. According to the PAS, Nurse ██████ recorded that the Appellant could independently dress herself with prompting. While the PAS indicated that the Appellant's representative denied the Appellant needing physical assistance with dressing her upper and lower body, the Appellant's representative testified during the hearing, that she told Nurse ██████ that the Appellant needed assistance snapping her bra.

Although medical records are admissible as evidence without the testimony of the health care professional who prepared the report, as the assessing nurse conducted the assessment via telephone and could not have physically evaluated the Appellant. Cross examination of Nurse ██████ would have been meaningful in this instance to determine whether Nurse ██████ misunderstood the Appellant's representative's report when assessing the area of *dressing*. The Appellant's representative provided reliable testimony that the Appellant required physical assistance with her undergarments at the time of the assessment. As a physical assessment wasn't provided in the PAS and the assessing nurse was not present for cross examination, the PAS record's reliability in this area cannot be affirmed. The recorded representative's report of the Appellant's ability to extend her arms above her head, touch the top of her head, touch her face, bend at the waist, touch her hips, and touch her shoulders does not rule out the Appellant's representative's argument that the Appellant required assistance snapping her bra.

The preponderance of evidence demonstrated that the Appellant required physical assistance with *dressing* at the time of the PAS.

Continence

To receive a deficit in the areas of bladder and bowel continence, the Appellant had to be totally incontinent. No evidence was presented to demonstrate that the Appellant was incontinent at the time of the PAS; therefore, a deficit cannot be affirmed for *continence*.

Orientation

To receive a deficit for *orientation*, the Appellant had to be totally disoriented or comatose. No evidence was presented to demonstrate that the Appellant was disoriented at the time of the PAS; therefore, a qualifying deficit cannot be affirmed for *orientation*.

Transfer, Walking, Wheeling

To receive a deficit in these areas, the Appellant had to require physical assistance or more for *transferring, walking, or wheeling*. No evidence was presented to demonstrate that the Appellant required physical assistance in these areas; therefore, qualifying deficits cannot be affirmed.

Skilled Needs

To receive a deficit in this area, the Appellant had to require skilled care for suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, or irrigations. No evidence was presented to demonstrate that the Appellant required skilled care in these areas.

CONCLUSIONS OF LAW

- 1) To qualify for the Medicaid ADW program, the preponderance of evidence had to demonstrate that the Appellant had five (5) qualifying functional deficits at the time of the PAS.
- 2) The preponderance of evidence demonstrated that the Appellant had deficits in *vacating a building, eating, bathing, grooming, dressing, and administering medications* at the time of the PAS.
- 3) The Respondent incorrectly denied the Appellant medical eligibility for the ADW program.

DECISION

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

ENTERED this 13th day of January 2026.

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