



May 03, 2024

[REDACTED]

Re: [REDACTED] v WV DoHS BMS
ACTION NO.: 24-BOR-1725

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 Human Services. 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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: Connie Sankoff, BoSS
Braden Scheick, Acentra

BEFORE THE WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

IN THE MATTER OF:

██████████,

Appellant,

v.

ACTION NO.: 24-BOR-1725

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 April 30, 2024, on an appeal filed March 14, 2024.

The matter before the Hearing Officer arises from the March 08, 2024 determination by the Respondent to terminate the Appellant's Medicaid Aged and Disabled Waiver (ADW) Program benefits.

At the hearing, the Respondent appeared by Connie Sankoff, RN, Bureau of Senior Services (BoSS). Appearing as a witness for the Department was Braden Scheick, RN, Acentra Health. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Case Manager, and ██████████ the Appellant's granddaughter/caretaker. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau of Medical Services (BMS) Aged & Disabled Waiver Services Policy Manual §§ 501.11 through 501.12.2.3
- D-2 BMS Request for Hearing, Discharge Documentation, and Scan of Mailed Envelope
- D-3 Notice of Decision: Potential Termination, dated February 20, 2024
- D-4 Notice of Decision: Final Termination, dated March 08, 2024
- D-5 Repeat of D-4
- D-6 ADW Program Medical Necessity Evaluation Request
- D-7 Pre-Admission Screening (PAS), dated February 20, 2024

- D-8 PAS Summary, dated March 22, 2023
D-9 PAS Summary, dated February 20, 2024

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 participant in the Aged and Disabled Waiver (ADW) Program and received Personal Attendant (PA) services.
- 2) On February 20, 2024, Acentra Health RN, Braden Scheick (Mr. Scheick), completed a Pre-Admission Screening (PAS) with the Appellant. (Exhibit D-7)
- 3) The Appellant was awarded with three (3) functional deficits in the areas of *Vacating a Building*, *Eating*, and *Grooming*. (Exhibits D-5, D-7, and D-9)
- 4) Subsequent to the February 2024 PAS, Acentra Health issued a notice advising the Appellant that she was found to be ineligible for the ADW program due to lacking deficits in at least five (5) critical areas. (Exhibit D-3)
- 5) The February 20, 2024 notice advised the Appellant of potential termination of ADW services due to unmet medical eligibility and provided a two-week deadline for submitting additional medical information for consideration. (Exhibit D-3)
- 6) On March 08, 2024, a Notice of Decision: Final Termination was issued to the Appellant advising that she did not meet the medical eligibility criteria in at least five (5) of the thirteen (13) critical areas as required by policy for participation in the ADW program. (Exhibit D-4)
- 7) The Appellant and witnesses argued additional deficits should have been awarded in the areas of *Bathing* and *Continence Bowel/Continence Bladder*.
- 8) The Appellant is a Level 3, incontinent, in the area of *Continence Bowel/Continence Bladder*.
- 9) The Appellant is a Level 2, physical assistance, in the area of *Bathing*.

APPLICABLE POLICY

Bureau for Medical Services (BMS) Provider Manual, Chapter 501: Aged and Disabled Waiver (ADW), § 501.12 Medical Eligibility provides, in part:

The Utilization Management Contractor (UMC) is the entity that is responsible for conducting, and reviewing existing nursing facilities, for TMH applicants/participants, 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:

- New applicants and existing members are medically eligible based on current and accurate evaluations.
- 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.
- The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

BMS Manual § 501.12.1 Medical Criteria provides in part:

An individual must have five deficits as described on the Pre-Admission Screening Form (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 Deficits	
#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 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.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
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 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 for 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

Pursuant to policy, Applicants for the ADW program must be medically eligible for a nursing home level of care and in need of services. Acentra Health, the Utilization Management Contractor (UCM) for the Bureau for Medical Services (BMS), is responsible for conducting medical necessity evaluations to confirm an individual's medical eligibility for waiver services. ADW Home and Community-Based Services Waiver Policy Manual §501.12.1 sets forth the medical eligibility criteria: an individual must have five (5) deficits on the Pre-Admission Screening (PAS) to qualify medically for the ADW Program. The Respondent had to prove by a preponderance of evidence that the Appellant did not present with deficits in at least five (5) functioning areas at the time of the PAS.

On February 20, 2024, Mr. Braden Scheick, RN, with Acentra Health, completed a PAS with the Appellant. At that time, the Appellant was awarded with three (3) functional deficits in the areas of *Vacating a Building*, *Eating*, and *Grooming*. Subsequent to the completion of the PAS, Acentra Health issued a notice advising the Appellant that she was found to be ineligible for the ADW program due to lacking deficits in at least five (5) critical areas. The February 20, 2024 notice advised

the Appellant of a potential termination of ADW services due to unmet medical eligibility. The notice further advised that if the Appellant has additional information regarding medical conditions that she believes were not considered, she has two (2) weeks from the date of the letter to submit the records to Acentra Health for consideration before a final determination would be rendered. Having received no additional documentation, on March 08, 2024, a Notice of Decision: Final Termination letter was issued to the Appellant advising that she did not meet the medical eligibility criteria in at least five (5) of the thirteen (13) critical areas as required by policy for participation in the ADW program.

The Appellant and the Appellant's witnesses contested the Respondent's denial and argued that because the Appellant was alone, and because the assessing nurse was a male, the Appellant felt uncomfortable and was not honest and forthcoming with her answers. The Appellant and witnesses further argued that the Appellant's functioning level worsened shortly after the PAS was completed due to multiple surgeries and the insertion of a peritoneal catheter for in-home dialysis. However, it must be noted for future reference to the Appellant and the Appellant's witnesses that the Respondent relies on the information provided during the PAS to determine the Appellant's eligibility for the ADW program. It is of utmost importance to disclose truthful and accurate information of health and functional abilities at that time. And while it is understandable that embarrassment may occur, the assessing nurse must go by the information they are provided at the time of the PAS when determining eligibility. It should also be noted that the Appellant may also have anyone of their choosing attend the PAS assessment to allow opportunity to provide additional details regarding the Appellant's functioning.

At the time of the hearing, testimony was provided regarding two areas of note: *Continence Bowel/Continence Bladder* and *Bathing*. To receive a deficit in *Continence Bowel/Continence Bladder*, the Appellant had to be assessed as Level 3 or higher, indicating the Appellant was incontinent. The PAS narrative indicated the Appellant reported she was continent at the time of the PAS and did not require the use of incontinence supplies. During the hearing, the Appellant and her witnesses all testified that the Appellant is incontinent and has been for "the past 9 months." The Appellant's witnesses testified that the Appellant uses incontinence supplies daily but she did not report it to the assessing nurse at the time of the PAS due to embarrassment. Although Mr. Scheick correctly assessed the Appellant's incontinence as a Level 1 based upon the information she provided during the PAS assessment, a functional deficit in the area of continence was established at the hearing based on the credible testimony provided.

To receive a deficit in *bathing*, the Appellant had to be assessed as Level 2 and require physical assistance or more. At the time of the February 2024 PAS, the Appellant reported transferring in and out of the shower without assistance, and the ability to bathe all areas independently. The PAS narrative indicated that because the Appellant's previous PAS reported her inability to transfer in and out of the shower and her need for assistance with washing, Mr. Scheick made the Appellant aware of this functional ability change. Because the Appellant reported that "she can now perform this," Mr. Scheick correctly assessed the Appellant's incontinence as a Level 1 based upon the information provided during the PAS assessment. At the time of the hearing, the Appellant and the Appellant's witnesses all testified that the Appellant requires physical assistance with transferring

in and out of the shower and with washing. This testimony, when taken in conjunction with the Appellant's awarded deficit in the area of *grooming* - is found to be credible. Based upon evidence and credible testimony, it is found that the Appellant should have been assessed at Level 2, physical assistance, with an additional deficit awarded in the area of *bathing*.

Whereas additional deficits were found in *Continence Bowel/Continence Bladder* and *Bathing*, the Appellant continues to meet the medical criteria to receive services under the Aged and Disabled Waiver Program.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid Aged and Disabled Waiver (ADW) program, the applicant must demonstrate deficits in at least five (5) functioning areas outlined on the Pre-Admission Screening (PAS).
- 2) At the time of the February 20, 2024 PAS, the Appellant demonstrated deficits in the functioning areas of *Vacating a Building*, *Eating*, and *Grooming*.
- 3) Based upon the information presented, the Appellant established two (2) additional deficits in the areas of *Bathing* and *Continence Bowel/Continence Bladder* for a total of five (5).
- 4) Because the Appellant has five (5) deficits, she continues to meet the medical criteria to receive Aged and Disabled Waiver services and therefore, the Respondent must not terminate her participation.

DECISION

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

ENTERED this 3rd day of May 2024.

Angela D. Signore
State Hearing Officer