



August 29, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS BMS  
ACTION NO.: 24-BOR-2637

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

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

██████████,

**Appellant,**

v.

**Action Number: 24-BOR-2637**

**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 August 20, 2024.

The matter before the Hearing Officer arises from the June 12, 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 a witness for the Appellant was ██████████, Case Manager. 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 501.37
- D-2 ADW Program Medical Necessity Evaluation Request
- D-3 BMS Request for Hearing, Discharge Documentation, and Scan of Mailed Envelope
- D-4 Notice of Decision: Potential Termination, dated May 29, 2024
- D-5 Additional Information, Submitted by ██████████, dated June 05, 2024
- D-6 Pre-Admission Screening (PAS), dated May 28, 2024
- D-7 PAS Summary, dated May 28, 2024
- D-8 Notice of Decision: Final Termination, dated June 12, 2024
- D-9 PAS, dated June 11, 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 May 28, 2024, Acentra Health RN, Braden Scheick (Mr. Scheick), completed a Pre-Admission Screening (PAS) with the Appellant. (Exhibits D-4 and D-6)
- 3) The Appellant was awarded two (2) functional deficits: *Vacating a Building* and *Grooming*. (Exhibits D-4 through D-7, and D-9 through D-10)
- 4) Subsequent to the May 2024 PAS, Acentra Health issued a notice advising the Appellant that he was ineligible for continued ADW Program services due to lacking deficits in at least five (5) critical areas. (Exhibit D-4)
- 5) The May 29, 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-4)
- 6) On June 05, 2024, the Appellant's case manager, [REDACTED] submitted additional documentation to the Respondent for consideration of continued ADW services. (Exhibit D-5)
- 7) On June 11, 2024, after consideration of the additional documentation submitted June 05, 2024, the Appellant's PAS was updated. However, no additional functional deficits were awarded. (Exhibits D-9 and D-10)
- 8) On June 12, 2024, a Notice of Decision: Final Termination letter was issued to the Appellant advising that because a PAS was not completed, he is medically ineligible for participation in the ADW program. (Exhibit D-8)
- 9) The June 2024 Notice of Decision reflected an incorrect justification for termination of the Appellant's ADW program service benefits. (Exhibit D-8)
- 10) The Appellant's ADW program service benefits were terminated due to the Appellant not presenting with deficits in at least five (5) functioning areas at the time of the PAS. (Exhibits

D-2 through D-10)

11) The Appellant and the Appellant's witness argued additional deficits should have been awarded in the areas of *Eating, Bathing, Dressing* and *Administering Medications*.

12) The Appellant is a Level 1, Self/Prompting, in the area of *Eating, Bathing, and Dressing*.

13) The Appellant is physically capable of *administering medications* to himself.

### **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.

<b>Section</b>	<b>Description of Deficits</b>
#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. 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 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 and that the Appellant received proper notice of medical eligibility.

On May 28, 2024, Mr. Braden Scheick, RN, with Acentra Health, completed a PAS with the Appellant. At that time, the Appellant was awarded with two (2) functional deficits: *Vacating a Building* and *Grooming*. Subsequent to the completion of the PAS, Acentra Health issued a notice advising the Appellant that he was found to be ineligible for the ADW program due to lacking deficits in at least five (5) critical areas. The May 29, 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 he believes were not considered, he 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 additional documentation submitted by the Appellant's case manager, [REDACTED], on June 05, 2024, the Appellant's PAS was updated; however, no additional deficits were awarded. On June 12, 2024, a Notice of Decision: Final Termination was issued to the Appellant. The Appellant and the Appellant's witness contested the Respondent's denial and argued that the Appellant should have been awarded additional deficits in areas of *eating*, *bathing*, *dressing*, and *administering medication*. The Appellant testified that because he was still feeling the effects of a sleeping medication that he had taken the previous night, his responses at the time of the PAS were inaccurate. It must be noted that the Respondent relies on the information provided during the PAS to determine the Appellant's eligibility for the ADW program. It should also be noted that the Appellant may also have anyone of their choosing attend the PAS assessment to allow an opportunity to provide additional details regarding the Appellant's functioning.

To receive a deficit in the area of *eating*, the Appellant had to be assessed as Level 2 or higher and require physical assistance to get nourishment at the time the PAS was completed. The Appellant's witness testified that the Appellant needs help cutting food at meal time, but that he can feed himself. As reflected on the PAS, because the Appellant has the physical capability to feed himself with normal utensils and does not require the use of adaptive equipment or require physical assistance to gain nourishment, a deficit could not be awarded in the area of *eating*.

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 May 2024 PAS, the Appellant reported transferring in and out of the shower without assistance, and the ability to bathe all areas independently. The Appellant's witness testified that the Appellant requires assistance with having bath items laid out, and "on bad days" he will need assistance getting in and out of the shower. As the Appellant was assessed as a Level 1 and did not meet the policy requirement of being assessed as Level 2 or higher and requiring physical assistance to complete *bathing*, a deficit could not be awarded.

To receive a deficit in the area of *dressing*, the Appellant had to be assessed as a Level 2 or higher and require physical assistance. The evidence established that the Appellant reported dressing his

upper and lower body, putting on socks and shoes, as well as performing snapping, buttoning, zipping, buckling, velcroing, and tying of shoes. As the Appellant was assessed as a Level 1 and no evidence or testimony was provided to establish that he required physical assistance, a deficit could not be awarded in the area of *dressing*.

During the hearing, the Appellant's witness testified that the Appellant should be awarded a deficit in the area of *administering medications* since the Appellant needs medication reminders. At the time of the PAS, the Appellant reported being able to administer his own medications by independently removing them from the bottles, placing the pills in his mouth, and consuming with a drink. Because no evidence was entered to establish that the Appellant was physically incapable of administering his own medications, a deficit could not be awarded in the area of *administering medications*.

The testimony and evidence presented showed that the Appellant did not have any additional functional deficits at the time of his May 2024 PAS assessment. Because the Appellant qualifies for two (2) functional deficits, which is below the five (5) deficit threshold to establish continued medical eligibility, the Respondent was correct to terminate the Appellant's ADW services. It should be noted that while the Respondent's June 12, 2024, Notice of Decision informed the Appellant that he no longer meets the medical criteria to continue receiving services under the ADW Program because a PAS assessment could not be conducted, the notice does still indicate that the Appellant lost services due to unmet deficits. It should further be noted that because the Appellant has not received continued ADW services during the appeal process, requiring the Respondent to issue a corrective notice would be of no benefit to the Appellant.

### **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 May 28, 2024 PAS, the Appellant demonstrated deficits in the functioning areas of *Vacating a Building* and *Grooming*.
- 3) The preponderance of evidence verified that the Appellant did not demonstrate five (5) functional deficits on the PAS.
- 4) Because the Appellant does not have five (5) functional deficits, the Appellant no longer meets the medical eligibility criteria to continue receiving services under the Aged and Disabled Waiver Program.

**DECISION**

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

**ENTERED this \_\_\_\_\_ day of August 2024.**

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**Angela D. Signore  
State Hearing Officer**