



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

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Cabinet Secretary

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M. Katherine Lawson
Inspector General

August 28, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-1726

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 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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra Grueser, Department Representative
Coordinating Council for Independent Living, Case Management Agency

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

████████████████████

Appellant,

v.

Action Number: 18-BOR-1726

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 July 12, 2018, and reconvened on August 14, 2018, on an appeal filed May 10, 2018.

The matter before the Hearing Officer arises from the April 25, 2018 decision by the Respondent to terminate the Appellant's Personal Care Services (PCS) based on unmet medical eligibility.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as a witness for the Department was Erica Blake. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 BMS Provider Manual (excerpt)
 Chapter 517 Personal Care Services
 §§ 517.13.5 – 517.13.7

- D-2 Personal Care Pre-Admission Screening (PAS)
 PAS Summary form
 Assessment date: April 25, 2018

- D-3 Personal Care Pre-Admission Screening (PAS)
Assessment documents
Assessment Date: April 25, 2018
- D-4 Notice of Decision: Termination
Notice Date: April 25, 2018
- D-5 Personal Care Pre-Admission Screening (PAS)
PAS Summary form
Assessment date: March 30, 2017

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 Personal Care Services (PCS).
- 2) An assessment of the Appellant’s continuing need for PCS was conducted on April 25, 2018. (Exhibits D-2 and D-3)
- 3) By notice dated April 25, 2018, the Appellant advised the Respondent that PCS would be terminated due to unmet medical eligibility – specifically, that the Appellant only established deficiencies or “deficits” in two areas of care, as opposed to the minimum of three set by policy. (Exhibit D-4)
- 4) The Appellant proposed deficits in the areas of *eating* and *dressing*.
- 5) The Appellant’s assessing nurse recorded her findings regarding the Appellant’s functional abilities in the home in Pre-Admission Screening (PAS) documents. (Exhibits D-2 and D-3)
- 6) The Appellant was additionally assessed on March 31, 2017, and those findings were summarized in a PAS summary form. (Exhibit D-5)
- 7) The Appellant requires physical assistance in the area of *eating*.
- 8) The Appellant requires physical assistance in the area of *dressing*.

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, Chapter 517 – Personal Care Services, addresses medical eligibility for the program at §517.13.5, and reads, “An individual must have three deficits as described on the PAS Form to qualify medically for the Personal Care Program.”

The policy defines the assessment element of *eating* as a deficit when the observed level is at a Level 2 or higher, which is described as requiring “physical assistance to get nourishment, not preparation.”

The policy also defines the assessment element of *dressing* as a deficit when the observed level is at a Level 2 or higher, which is described as requiring “physical assistance or more.”

DISCUSSION

The Appellant has appealed the Respondent’s decision to terminate her eligibility for Personal Care Services based on insufficient deficits to establish medical eligibility. The Respondent must show by preponderance of the evidence that the Appellant did not have the three (3) deficits required to establish medical eligibility for continued Personal Care Services.

Medical eligibility for PCS is assessed by a nurse whose findings are recorded on a PAS. The assessing nurse documented her findings the Appellant was independent in the two contested areas of care – *eating* and *dressing*. The Appellant testified that she suffers from arthritis and back pain, which directly impair her ability to cut up her food and dress herself. [REDACTED] – a nurse that has provided direct care to the Appellant for years – testified that the Appellant “couldn’t open a soda bottle” due to the extent of her arthritis. The Appellant testified that it is difficult for her to bend sufficiently to reach her feet due to her back pain, and as a result she requires physical assistance with *dressing*. The Appellant established that she requires physical assistance in both *eating* and *dressing* – the necessary threshold for deficits in both areas.

With two additional deficits revealed through evidence and testimony, the Appellant has a total of four (4) deficits and has established medical eligibility for PCS. The Respondent was incorrect to terminate the Appellant’s participation in the PCS program.

CONCLUSIONS OF LAW

- 1) Because the Appellant requires physical assistance in the areas of eating and dressing, the Appellant established two (2) additional PCS deficits, for a total of four (4) deficits.
- 2) Because the Appellant has four (4) deficits, she established medical eligibility for PCS and the Respondent must not terminate her participation in the PCS program.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's Personal Care Services.

ENTERED this ____ Day of August 2018.

**Todd Thornton
State Hearing Officer**