



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
State Capitol Complex
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**M. Katherine Lawson
Inspector General**

August 17, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-1794

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-1794

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 25, 2018, on an appeal filed May 26, 2018.

The matter before the Hearing Officer arises from the May 18, 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 were ██████████ and ██████████. 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 Notice of Decision: Termination
 Notice Date: May 18, 2018

- D-3 Personal Care Pre-Admission Screening (PAS)
 Summary form and Assessment
 Assessment Date: May 18, 2018

D-4 Personal Care PAS
 Summary form and Assessment
 Assessment Date: May 10, 2017

Appellant's Exhibits:

A-1 Letter from [REDACTED], APRN, FNP-C
 Letter Date: June 27, 2018

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 May 18, 2018. (Exhibit D-3)
- 3) By notice dated May 18, 2018, the Respondent advised the Appellant that PCS would be terminated due to unmet medical eligibility – specifically, that the Appellant established deficiencies or “deficits” in two areas of care, as opposed to the minimum of three set by policy. (Exhibit D-2)
- 4) The Appellant proposed deficits in the areas of eating, bathing, dressing, walking, and transferring.
- 5) The Appellant's assessing nurse recorded her findings regarding the Appellant's functional abilities in the home on a Pre-Admission Screening (PAS) form. (Exhibit D-3)
- 6) The PAS indicated the Appellant's functional abilities in all proposed areas – eating, bathing, dressing, walking and transferring – were at a “Level 1,” or that the Appellant performs these activities independently or with prompting. (Exhibit D-3)
- 7) Regarding the area of eating, comments recorded on the May 2018 PAS note the Appellant “reported the ability to cut food,” “stated that she does not need help eating,” “reports ability to feed self with normal utensils,” and “denies use of adaptive equipment to aide [*sic*] in the task of eating.” (Exhibit D-3)
- 8) Regarding the area of bathing, comments recorded on the May 2018 PAS note the Appellant “denied the need to have assistance with bathing,” and “can take a shower independently and does not need assistance.” (Exhibit D-3)

- 9) Regarding the area of dressing, comments recorded on the May 2018 PAS note the Appellant “does not need assistance with dressing,” and “can dress independently, apply socks and shoes, buttons, zippers and snaps.” (Exhibit D-3)
- 10) Regarding the area of walking, comments recorded on the May 2018 PAS note the Appellant “reported the ability to walk without hands on assistance at this time. [Appellant] Reports use of [medical equipment] to aide [*sic*] in task. Fall history/Safety Risk: fall about 1 week ago, no injuries.” (Exhibit D-3)
- 11) In the PAS conducted regarding the Appellant on May 10, 2017, the Appellant was assessed in the area of walking as “Level 2 – Supervised/Assistive Device.” (Exhibit D-4)
- 12) The Appellant has a history of falls.
- 13) The Appellant’s ability to walk varies, which she described as “good” and “bad” days.
- 14) The Appellant is unable to open a water bottle due to her weakened grip.
- 15) The Appellant has difficulty breathing, as noted by her nurse [REDACTED].
- 16) Regarding the area of transferring, comments recorded on the May 2018 PAS note the Appellant “reported the ability to transfer without hands on assistance at this time from the bed, toilet, and furniture used inside the home.” (Exhibit D-3)
- 17) In addition to the deficits assessed for the Appellant 2018, she was awarded deficits in the areas of eating, bathing, and dressing in 2017. (Exhibit D-3)

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 provides a table of functional abilities in the home, and the observed levels required in each area to establish a deficit. To establish a deficit in the areas of eating, bathing and dressing an individual must be “Level 2 or higher,” which is described as requiring physical assistance or more. To establish a deficit in the areas of walking and transferring an individual must be “Level 3 or higher,” which is described as “one-person or two-person assistance in the home” for transferring and “one-person assistance in the home” for walking.

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 nurse's comments regarding the Appellant report independence in all areas of care proposed by the Appellant. The comments regarding walking, however, indicate the awareness of a history of falls that was confirmed by the Appellant during the hearing. The Appellant has problems with grip strength and breathing that contradict the Respondent's assessed level in the area of walking. The Appellant is clearly not independent in the area of walking, and her problems with grip and breathing indicate more likely than not she requires one-person, hands-on assistance in this area for safety.

With an additional deficit in the area of walking, the Appellant met the required threshold of three deficits for PCS medical eligibility. The decision of the Respondent to terminate PCS services based on unmet medical eligibility is incorrect.

CONCLUSIONS OF LAW

- 1) Because the Appellant requires one-person assistance in the area of walking, the Respondent established a deficit in this area.
- 2) Because the Appellant has deficits in three of the areas designated for PCS medical eligibility, she has met the medical eligibility criteria and the Respondent must approve Personal Care Services.

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**