



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

Bill J. Crouch
Cabinet Secretary

**Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241**

M. Katherine Lawson
Inspector General

August 22, 2018



RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-1864

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Tammy Grueser, BoSS

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

██████████,

Appellant,

v.

ACTION NO.: 18-BOR-1864

**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 August 15, 2018, on an appeal filed June 18, 2018.

The matter before the Hearing Officer arises from the June 1, 2018 decision by the Respondent to terminate the Appellant's Personal Care Program services.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN, KEPRO. The Appellant was represented by his mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Provider Manual Section 517.13
- D-2 Medical Necessity Evaluation Request dated April 10, 2018
- D-3 Notice of Decision dated June 1, 2018
- D-4 PAS Summary submitted on May 31, 2018
- D-5 Pre-Admission Screening (PAS) completed on May 29, 2018
- D-6 PAS Summary submitted on April 26, 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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Personal Care services and was subject to an annual medical assessment to determine continued eligibility for the program.
- 2) On May 29, 2018, KEPRO completed a Pre-Admission Screening (PAS) and determined that the Appellant was no longer medically eligible for Personal Care services.
- 3) The Appellant was awarded zero (0) deficits on the May 29, 2018 PAS (D-4).
- 4) An individual must exhibit deficiencies in at least three (3) functional areas to be determined medically eligible for Personal Care services.
- 5) The Appellant was notified of the service termination in a Notice of Decision dated June 1, 2018 (D-2).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Provider Manual Section 517.13.1 Medical Eligibility Determination (D-1) states:

The Utilization Management Contractor (UMC) is the entity responsible to conduct the medical necessity assessment to confirm a person's eligibility for Personal Care services. The UMC will use the Pre-Admission Screening (PAS) tool to certify an individual's medical eligibility for services and determine the level of services required.

BMS Provider Manual Section 517.13.5 lists medical criteria for the Personal Care Program. It states that an individual must have three (3) deficits as described on the PAS Form to qualify medically for the Personal Care Program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section #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.	Continenence, Bowel Continenence, Bladder	Level 3 or higher (must be incontinent)
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transferring	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 outside the home.)

An individual may also qualify for Personal Care services if he/she has two (2) functional deficits identified as listed above (items refer to PAS) and any one or more of the following conditions indicated on the PAS:

Section

#24

Decubitus; Stage 3 or 4

#25

In the event of an emergency, the individual is mentally unable or physically unable to vacate a building. Independently or with supervision are not considered deficits.

#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

Policy states that an individual must receive three (3) deficits as described on the PAS to qualify medically for Personal Care services. These deficits are derived from a combination of assessment elements on the PAS.

The Appellant received zero (0) deficits on his May 2018 PAS during his medical reassessment. During the hearing, the Appellant’s mother testified that the Appellant suffers from seizures, and requires assistance with bathing, dressing, grooming, transferring and walking when the seizures

occur. In addition, the Appellant becomes incontinent and disoriented when experiencing a seizure. The Appellant's mother indicated that the Appellant was having a "good day" on the date of the assessment. The KEPRO nurse testified that the Appellant's mother reported that he averages about 10 seizures per month; therefore, the seizures were not considered in determining the Appellant's ability to participate in activities of daily living. The Appellant's mother stated that she had only estimated the number of seizures the client suffers per month because she does not always observe their occurrence. She said that the seizures normally "set him back" for a couple days while he recovers.

The Appellant has a documented seizure disorder, and his mother provided credible testimony to indicate that his seizures are debilitating, resulting in the need for physical assistance in the areas of bathing, dressing, grooming, walking and transferring during the recovery period. As the Appellant reportedly has an average of 10 seizures per month (two or more per week), the need for physical assistance with these activities of daily living has been established.

CONCLUSIONS OF LAW

- 1) To be eligible for Personal Care services, an individual must receive three (3) functional deficits on the PAS form.
- 2) The Appellant received zero (0) deficits on his May 2018 PAS.
- 3) Based on information provided during the hearing, the Appellant is awarded deficits in the areas of bathing, dressing, grooming, walking and transferring. The areas of incontinence and orientation will not be addressed because the addition of five (5) deficits renders the Appellant medically eligible for Personal Care services.
- 4) The Respondent incorrectly terminated the Appellant's services under the Personal Care Program based on medical ineligibility.

DECISION

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

ENTERED this 22nd day of August 2018.

Pamela L. Hinzman
State Hearing Officer

