



**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 29, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-1873

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

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

██████████,

Appellant,

v.

Action Number: 18-BOR-1873

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 June 14, 2018.

The matter before the Hearing Officer arises from the June 5, 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: June 5, 2018

- D-3 Personal Care Pre-Admission Screening (PAS)
 PAS Summary form and Assessment documents
 Assessment Date: June 4, 2018

D-4 Personal Care Pre-Admission Screening (PAS)
PAS Summary form and Assessment documents
Assessment date: June 1, 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 annual re-assessment of the Appellant’s need for PCS was conducted on June 4, 2018. (Exhibit D-3)
- 3) By notice dated June 5, 2018, the Appellant advised the Respondent that PCS would be terminated due to unmet medical eligibility – specifically, that the Appellant only established a deficiency or “deficit” in one area of care – *dressing* – as opposed to the minimum of three set by policy. (Exhibit D-2)
- 4) The Appellant proposed a deficit in the area of *bathing*.
- 5) The Appellant’s assessing nurse recorded and summarized her findings regarding the Appellant’s functional abilities in the home in the Pre-Admission Screening (PAS) documents and summary form. (Exhibit D-3)
- 6) The Appellant was additionally assessed on June 1, 2017, and those findings were recorded and summarized in the 2017 PAS documents and summary form. (Exhibit D-4)
- 7) The Appellant requires physical assistance in the area of *bathing*.

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 *bathing* 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 that the Appellant was independent in the only contested area of care – *bathing*. The Appellant was diagnosed with vertigo on both the 2018 PAS and the 2017 PAS. The Appellant was awarded the area of *bathing* on the 2017 PAS. [REDACTED] testified regarding the Appellant, contending that she should not stoop or bend over because she becomes dizzy and could fall. The Appellant established that she should have been assessed as requiring physical assistance with *bathing*, and therefore should have been awarded a deficit in this area. However, program policy requires a minimum of three (3) deficits to establish medical eligibility and with *bathing* established in the hearing and the area of *dressing* previously established during the 2018 assessment, the Appellant only established a total of two (2) deficits.

With a total of two (2) deficits revealed through evidence and testimony, the Appellant did not establish medical eligibility for PCS. The Respondent was correct to terminate the Appellant's participation in the PCS program.

CONCLUSIONS OF LAW

- 1) Because the Appellant requires physical assistance in the area of *bathing*, the Appellant established one deficit during the hearing, for a total of two (2) deficits.
- 2) Because the Appellant does not have a minimum of three (3) deficits, she did not establish medical eligibility for PCS and the Respondent must terminate her participation in the PCS program.

DECISION

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

ENTERED this ____ Day of August 2018.

**Todd Thornton
State Hearing Officer**