



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Fairmont, WV 26554
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Jolynn Marra
Interim Inspector General

September 12, 2018



RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-1979

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,

Tara B. Thompson
State Hearing Officer
State Board of Review

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

cc: Tamra Grueser, Bureau of Senior Services
[REDACTED], Appellant's Medical Advocate

FINDINGS OF FACT

- 1) The Appellant is a participant in the Medicaid Personal Care Services (PCS) Program and receives PCS through the Coordinating Council for Independent Living.
- 2) On June 18, 2018, the Respondent's witness, [REDACTED], completed a PAS to determine the Appellant's medical eligibility for continued PCS participation. (Exhibits D-1 and D-2)
- 3) The Appellant's witness, [REDACTED], was present during completion of the June 18, 2018 PAS and the Appellant's Medical Advocate, [REDACTED], provided information by telephone regarding the Appellant's medication. (Exhibit D-1)
- 4) On June 19, 2018, the Respondent issued a notice advising the Appellant that his participation in PCS would be terminated due to being found medically ineligible for PCS by failing to demonstrate deficits in at least three (3) critical areas on the PAS. (Exhibit D-6)
- 5) The Appellant was awarded a deficit in the functioning area of *eating*. (Exhibit D-6)
- 6) The Appellant did not require physical assistance for bathing, dressing, or walking. (Exhibit D-1)
- 7) The Appellant was intermittently disoriented on the day of the PAS. (Exhibit D-1)
- 8) The Appellant was able to verbalize a plan to vacate the building independently during an emergency. (Exhibit D-1)
- 9) The Appellant required physical assistance to file his toenails. (Exhibit D-1)
- 10) The Appellant was not prescribed oral medications and was only prescribed medications administered by injection. (Exhibit D-1)
- 11) The Appellant is physically unable to administer his prescription injections.

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §517.13 Program Eligibility provides in part:

To be eligible for the Personal Care Program, the applicant must be medically eligible.

BMS Manual §517.13.1 Medical Eligibility Determination provides in part:

The Utilization Management Contractor (UMC) uses the Pre-Admission Screening (PAS) tool to certify an individual's medical eligibility for PC services and determine the level of service required. The member must demonstrate three deficits, based on the presence and level of severity of functioning deficits, possibly accompanied by certain medical conditions to be determined medically eligible for PCS.

BMS Manual §517.13.5 Medical Criteria provides in part:

An individual must have three deficits as described on the PAS form to qualify medically for PCS.

- #26. Functioning abilities of an individual in the home ...
 - 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 [emphasis added] or more) ...
 - g. Orientation- Level 3 or higher (totally disoriented, comatose) ...
 - i. Walking- Level 3 or higher (one-person assistance in the home) ...

An individual may also qualify for PC services if he has two functioning deficits identified as listed above and any one or more of the following conditions indicated on the PAS: [emphasis added]

- #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 dressing, or (m) irrigations
- #28- Individual is not capable of administering is own medications [emphasis added]

DISCUSSION

The Appellant is a recipient of PCS. On June 18, 2018, KEPRO, the UMC for BMS, conducted a PAS and issued a notice on June 19, 2018 advising the Appellant that he was ineligible for continued PCS due to lacking deficits in at least three critical areas. The Appellant was awarded one deficit in the functioning area of *eating*. The Appellant’s representative and witness argued the Appellant should have been awarded deficits in the functioning areas of *bathing, dressing, walking, orientation, vacating, grooming, and administering medications*.

The Respondent bears the burden of proof and had to demonstrate that the Appellant did not present with deficits in three functioning areas at the time of the PAS assessment.

Bathing, Dressing, and Walking

To be awarded a deficit in the functioning areas of *bathing* and *dressing*, the Appellant had to be assessed on the PAS as Level 2 - physical assistance or more. The Appellant argued that he required assistance obtaining clean clothing and items used to bathe. The evidence demonstrated that the Appellant was physically able to bathe and dress himself and did not require physical assistance to complete *bathing* and *dressing*. The Appellant argued that he would not take a bath or put on clean clothing if someone was not there to prompt him. On the PAS, the Appellant was assessed as a Level 1 - Self/Prompting in the functioning areas of *bathing* and *dressing*. Policy requires physical assistance, not prompting, to demonstrate a deficit in these functioning areas.

To be awarded a deficit in the functioning area of *walking*, the Appellant had to be assessed on the PAS as Level 3 - one-person assistance in the home. The Appellant’s witness argued that due to the Appellant’s heavy smoking, he had shortness of breath when ambulating. On the PAS, the Appellant was assessed as Level 1 - Independent in the functioning area of *walking*. No evidence was entered to demonstrate that the Appellant required one-person assistance in the functioning area of *walking*.

Orientation

To be awarded a deficit in the functioning area of *orientation*, the Appellant had to be assessed on the PAS as Level 3 - totally disoriented. On the PAS, the Appellant was assessed as Level 2 - intermittently disoriented. The Appellant's witness, who was also present during completion of the PAS, argued that the Appellant is not always oriented. The Appellant's witness testified that the Appellant was oriented on the day of the PAS. No evidence was entered to demonstrate that the Appellant was totally disoriented at the time of the PAS.

Vacating

To be awarded a deficit in the functioning area of *vacating*, the Appellant had to be assessed a mentally or physically unable to vacate the building during an emergency. On the day of the PAS, the Appellant was able to verbalize steps he would take to vacate the building in the event of an emergency. The Appellant was assessed as independent in the functioning area of *vacating*. Pursuant to policy, vacating independently is not considered a functioning deficit. No evidence was entered to demonstrate that the Appellant was mentally or physically unable to vacate a building during an emergency.

Grooming

To be awarded a deficit in the functioning area of *grooming*, the Appellant had to be assessed on the PAS as Level 2 - physical assistance. On the PAS, Appellant was assessed a Level 1 - self/prompting. The PAS contained a notation written by the Respondent's witness reflecting that the Appellant required assistance filing his toenails. The Respondent testified that requiring assistance filing toenails would be considered as requiring physical assistance. Pursuant to policy, because the Appellant required physical assistance with *grooming*, he should have been assessed as Level 2 and should have been awarded a deficit in the functioning area of *grooming*.

Medication Administration

To be awarded a deficit in the functioning area of *medication administration*, the Appellant had to be incapable of administering his own medications. On the PAS, the Appellant was assessed as being able to administer his own medications with prompting/supervision. The Appellant's witness testified that the Appellant is only prescribed injectable medications and has not been prescribed oral prescription medications since approximately January 2018. The Appellant takes over the counter (OTC) pain medication when he has a headache; however, he is not prescribed medication for a diagnosis related to his headache. For the consideration of deficits when completing the PAS, the Respondent requires the diagnoses to be listed on the MNER and the prescribed medications must be related to the MNER diagnoses. Because the Appellant's oral use of OTC pain medications is not prescribed or related to a MNER diagnosis, use of OTC medications should not have been solely considered in determining his ability to administer his own medications. Although testimony was given regarding the reasons the Appellant was not prescribed oral medications, supporting documentation was not provided and therefore, reasons for the physician's determination to prescribe injections was not considered in the decision of this Hearing Officer.

The Respondent's witness testified that she assessed the Appellant based on his abilities to administer oral medications and did not assess his abilities to administer medications by other methods. Policy does not specify that the oral method is the only method of medication administration that may be considered when assessing the Appellant's functioning in the area of *medication administration*. Testimony by the Appellant's witness and representative demonstrated that the Appellant receives a prescribed injection once per month and another prescribed injection bi-weekly. The Respondent testified that the Appellant cannot administer his own monthly injection and argued that the reason for the physician's administration of

medication was not made clear by the Appellant's staff during the completion of the PAS. The Respondent's witness testified that certain psychiatric medications can only be administered by a physician; however, neither the Appellant's list of prescription medications or supporting evidence was entered to corroborate the Respondent's assertion that only a physician can administer the Appellant's medications.

The Appellant's witness testified that the Appellant travels to his physician's office to have the medications administered. The Appellant's witness testified that she has clients that are prescribed weekly injections that they administer to themselves at home, but that the Appellant is unable to administer his injections himself. Because the Appellant is only prescribed medications by injection and he is physically unable to administer his own injections, the Appellant should have been awarded a deficit in the functioning area of *medication administration*.

Eligibility

Policy provides that a member may qualify for PCS when the member possesses two deficits in the functioning areas identified on #26 of the PAS and is incapable of administering his own medications. Prior to the hearing, the Appellant had been awarded a deficit in the functioning area of *eating*. The preponderance of evidence presented during the hearing demonstrated that the Appellant should have received a deficit in the functioning areas of *grooming* and *medication administration*. Because the Appellant presented at the time of the PAS with deficits in three functioning areas, the Respondent's determination that the Appellant was ineligible for PCS was incorrect.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid Personal Care Services program, the applicant must demonstrate deficits in at least three (3) functioning areas outlined on the Pre-Admission Screening (PAS).
- 2) At the time of the June 18, 2018 PAS, the Appellant demonstrated deficits in the functioning areas of *eating*, *grooming*, and *medication administration*.
- 3) The Respondent incorrectly denied the Appellant's medical eligibility for the Medicaid Personal Care Services program.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision deny the Appellant medical eligibility for the Medicaid Personal Care Services program.

ENTERED this 12th day of September 2018.

Tara B. Thompson
State Hearing Officer