



**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**

Jolynn Marra
Interim Inspector General

September 20, 2018



RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2089

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 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-2089

**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 September 19, 2018, on an appeal filed July 28, 2018.

The matter before the Hearing Officer arises from the July 18, 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 present for the hearing, but was represented by ██████████, his niece and Medical Power of Attorney. 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 517.13.5
- D-2 Pre-Admission Screening (PAS) Screening and PAS Summary dated July 18, 2018
- D-3 PAS Summary dated September 12, 2017
- D-4 Notice of Decision dated July 18, 2018
- D-5 Medical Necessity Evaluation Request

Appellant's Exhibits:

- A-1 Letter from ██████████, M.D., dated August 22, 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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Personal Care Program services and was subject to an annual medical assessment to determine his continued eligibility for the program.
- 2) On July 18, 2018, KEPRO completed a Pre-Admission Screening (PAS) and determined that the Appellant was no longer medically eligible for the Personal Care Program.
- 3) The Appellant was awarded two (2) deficits on the July 18, 2018 PAS (D-2).
- 4) An individual must exhibit deficiencies in at least three (3) functional areas to be determined medically eligible for the Personal Care Program.
- 5) The Appellant was notified of the service termination in a Notice of Decision dated July 18, 2018 (D-2).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Provider Manual Section 517.13.1 Medical Eligibility Determination 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 (D-1) 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 the Personal Care Program. These deficits are derived from a combination of assessment elements on the PAS.

The Appellant received deficits in two (2) functional areas during his July 2018 PAS. During the hearing, his representative contended that he should have received additional deficits in the areas of physical assistance with eating and inability to administer medication.

The Appellant's representative testified that the Appellant must be prompted to eat and must be fed on his "bad days." She provided a letter from his physician (A-1), which states that the Appellant should not cut up food, as he is diabetic and cutting presents an increased risk for injury and infection. During the PAS, the Appellant reported that he could feed himself with utensils and cut up his own food.

The Appellant's representative, who was present during the July 2018 PAS, testified that the Appellant cannot administer his own insulin because he administered too much in the past and has suffered several insulin overdoses since 2007. The representative testified that a relative currently administers the Appellant's insulin, and that Medicaid authorized him to receive additional emergency medication based on his history of insulin overdoses. The KEPRO nurse who completed the Appellant's PAS testified that the Appellant reported the ability to prepare insulin and administer his own injections on the date of the assessment. The Appellant's representative contended that she told the KEPRO nurse about the Appellant's medical history during the PAS and that the Appellant was unable to administer his own insulin. She said she believed that the KEPRO nurse had included that information on the assessment. The KEPRO nurse indicated that she did not review the PAS with the Appellant and his representative following the assessment.

As the Appellant denied needing physical assistance with eating at the time of the PAS – and there is no documentation to indicate that the Appellant is physically incapable of cutting food – no additional deficit can be awarded in the functional level of eating.

Conflicting testimony was provided concerning information given to the KEPRO nurse during the PAS, and the Appellant's representative testified that the Appellant has had several overdoses of insulin since 2007. While the Appellant may be physically able to inject his own insulin, there have been occasions when he was mentally unable to determine the proper amount of insulin to administer. Based on testimony concerning the Appellant's prior overdoses while self-administering insulin, it is reasonable to believe that he no longer completes his own injections. Therefore, one (1) additional deficit is awarded for inability to administer medication.

CONCLUSIONS OF LAW

- 1) To be eligible for the Personal Care Program, an individual must receive three (3) functional deficits on the PAS.
- 2) The Appellant received two (2) deficits on his July 2018 PAS.
- 3) One (1) additional deficit - in the functional area of medication administration - is awarded based on information provided during the hearing.
- 4) As the addition of one (1) deficit brings the Appellant's total number of functional deficits to three (3), he remains medically eligible for the Personal Care Program.

DECISION

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

ENTERED this 20th day of September 2018.

Pamela L. Hinzman
State Hearing Officer