



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
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-0955 Fax: (304) 558-1992

Jolynn Marra
Interim Inspector General

December 18, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2481

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 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-2481

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 November 15, 2018, on an appeal filed September 26, 2018.

The matter before the Hearing Officer arises from the August 29, 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 a witness for the Appellant was ██████████. 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: August 29, 2018
- D-3 Personal Care Pre-Admission Screening (PAS)
 PAS Assessment documents and Summary form
 Assessment Date: August 28, 2018

- D-4 Personal Care Services Program documents
Member Assessment, dated August 8, 2018
Plan of Care, dated August 8, 2018
- D-5 Screen print of medications for the Appellant
Date printed: August 23, 2018
- D-6 Screen print of Member Authorization Group View for the Appellant
- D-7 Medical Necessity Evaluation Request form
Date signed: May 23, 2018

Appellant's Exhibits:

None

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 August 28, 2018. (Exhibit D-3)
- 3) By notice dated August 29, 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 – *grooming* – 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, orientation* and *vacating* a building in the event of an emergency.
- 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 is independent – or ‘Level 1’ as designated by program policy – in the areas of *eating, bathing, dressing, and vacating* a building in the event of an emergency.
- 7) The Appellant is fully oriented – or ‘Level 1’ as designated by program policy – in the area of *orientation*.

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.”

This policy also sets the areas of the PAS from which deficits may be derived, and the observed levels required in those areas to establish a deficit. For the areas of *eating*, *bathing*, and *dressing* a deficit is established at “Level 2 or higher (physical assistance or more).” For the area of *orientation* a deficit is established at “Level 3 or higher (totally disoriented, comatose).”

The policy only allows *vacating* as a deficit in conjunction with two deficits from the list of functional abilities in the home. The observed level required to establish vacating as a deficit – if at least two functional deficits have been separately established – is when the individual is mentally unable or physically unable. A deficit is not established when a person can vacate a building independently or with supervision.

DISCUSSION

The Appellant has appealed the Respondent’s decision to terminate his 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 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 Appellant was awarded one deficit on the most recent assessment. The assessment was conducted with the assessing nurse, the Appellant and [REDACTED] (the Appellant’s case manager) present.

The Appellant was assessed as independent and testified supporting that assessment in the areas of *eating*, *dressing* and *vacating* a building in the event of an emergency. The Appellant was assessed as oriented, noted as “alert to person, place and time” in the assessing nurse’s PAS comments (Exhibit D-3), and participated in this hearing. There was no evidence or testimony that the Appellant was totally disoriented or comatose with regard to the area of *orientation*.

The Appellant testified that he requires assistance with *bathing*, which differed from the nurse’s PAS comments noting, “Member denied the need to have assistance with bathing. Member reports that he can bathe independently. Member reports that caregiver does not assist with shower.” The PAS comments noted the nurse conducted a physical examination of the Appellant in which the Appellant demonstrated his ability to touch his head, face, shoulders, posterior hips, and his feet while seated (Exhibit D-3). The Appellant’s testimony was unconvincing given the evidence from the PAS.

With no additional 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.

CONCLUSION OF LAW

Because the Appellant does not have a minimum of three deficits as defined by PCS policy, he did not establish medical eligibility and the Respondent must terminate his 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 December 2018.

**Todd Thornton
State Hearing Officer**