



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

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Jolynn Marra
Interim Inspector General

December 19, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2520

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-2520

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 October 1, 2018.

The matter before the Hearing Officer arises from the September 12, 2018 decision by the Respondent to establish the Appellant's level of care for the Personal Care Services (PCS) program.

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 Personal Care Pre-Admission Screening (PAS)
 PAS Assessment documents, Summary form and medication list
 Assessment Date: August 30, 2018
- D-3 Medical Necessity Evaluation Request form
 Date signed: June 18, 2018

- D-4 Notice of Decision: Denied SLC Personal Care Request
Notice date: September 12, 2018
- D-5 Personal Care Services Program Plan of Care
Date signed: October 9, 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 30, 2018. (Exhibit D-2)
- 3) By notice dated September 12, 2018, the Appellant advised the Respondent that she was determined medically eligible for PCS. (Exhibit D-2)
- 4) The notice (Exhibit D-2) additionally established the authorized level of care of PCS for the Appellant, and stated the Appellant qualified for Level 1 services.
- 5) The notice (Exhibit D-2) stated the Appellant qualified for Level 1 services based on 13 points in qualifying areas of her PAS, and read, "In order to qualify for Level 1 services total points from the Pre-Admission Screening (PAS) form must range from 0 to 13. To qualify for Level 2 services points must range from 14 to 30."
- 6) The Appellant proposed additional points in the areas of *bathing*, *transferring*, *walking* and *wheeling*.
- 7) The Appellant requires physical assistance in the area of *bathing*.
- 8) The Appellant requires supervision or an assistive device in the area of *walking*.
- 9) The Appellant requires one-person assistance in the area of *transferring*.
- 10) Regarding the area of *wheeling*, the Appellant does not use a wheelchair in the home.

APPLICABLE POLICY

The Bureau for Medical Services Provider Manual, Chapter 517 – Personal Care Services, sets service level limits for the program at §517.13.7. Service level 1 requires “less than or equal to 13” points and corresponds to up to 60 service hours per month. Service level 2 requires “14-30” points and corresponds to between 61 and 210 service hours per month.

At §517.13.6, this policy identifies the areas of the PAS which may generate points and provides a description of the point criteria. The areas of *bathing*, *transferring* and *walking* (identified as PAS sections 26b, 26h, and 26i, respectively) each generate one point for Level 2, and two points for Level 3. The area of *wheeling* (identified as PAS section 26j) generates two points for Level 3 – on the condition that the individual also achieved a Level 3 or Level 4 in the area of *walking*.

DISCUSSION

The Appellant has appealed the Respondent’s decision to establish her level of care for Personal Care Services (PCS). The Respondent must show by preponderance of the evidence that the medical eligibility of the Appellant was correctly assessed in the areas used to determine her PCS level of care.

Medical eligibility for PCS is assessed by a nurse whose findings are recorded in the Pre-Admission Screen (PAS) documents. This PAS revealed the Appellant was assessed at a Level 2 – or, requiring physical assistance – in the area of *bathing*; a Level 3 (requiring one-person assistance) in the area of *transferring*; a Level 2 (requiring supervision or an assistive device) in the area of *walking*; and a Level 1 in the area of *wheeling* based off of no reported wheelchair use in the home.

The Appellant and her witness, [REDACTED], testified that the Appellant sometimes needs help with transferring for *bathing* and getting in and out of bed at night. This testimony confirmed the *bathing* and *transferring* levels documented by the assessing nurse. Regarding the area of *walking*, the assessing nurse’s PAS comments (Exhibit D-2) read, “Member reported the ability to walk without hands on assistance at this time. Member reports use of [medical equipment] to aide [*sic*] in task.” The Appellant and her witness testified that the Appellant uses a wheelchair in the home. This was contradicted by the assessing nurse’s PAS comments (Exhibit D-2) on the area of *wheeling*, which read, “Member denies use of manual or motorized wheelchair inside the living environment currently. Member reports that she has a wheelchair but does not use in the home.”

The PAS documentation of the assessing nurse reflects what the Appellant reported during the assessment, and there was no convincing explanation for the Appellant’s testimony to the contrary during the hearing. On this basis, the PAS documentation is given more weight and the assessment findings are affirmed.

With no additional PCS service level points revealed through evidence and testimony, the Respondent correctly determined the Appellant’s level of care in the PCS program.

CONCLUSION OF LAW

Because the Appellant was correctly assessed with 13 service level points as defined by PCS policy, the Respondent correctly established the Appellant's corresponding PCS level of care as Service Level 1.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to establish the Appellant's level of care for the Personal Care Services program.

ENTERED this ____ Day of December 2018.

**Todd Thornton
State Hearing Officer**