



**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

November 29, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2553

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-2553

**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 28, 2018, on an appeal filed October 16, 2018.

The matter before the Hearing Officer arises from the October 3, 2018 decision by the Respondent to terminate the Appellant's Personal Care Services.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Cristy Baker, RN, KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, care provider, ██████████. 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) and PAS Summary dated September 26, 2018
- D-3 PAS Summary submitted on October 3, 2018
- D-4 Medical Necessity Evaluation Request
- D-5 Personal Care Services Program Plan of Care dated September 24, 2018
- D-6 Notice of Decision dated October 3, 2018
- D-7 PAS Summary submitted on September 27, 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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Personal Care Services and was subject to an annual medical assessment to determine continued eligibility for the program.
- 2) On September 26, 2018, KEPRO completed a Pre-Admission Screening (PAS) (D-2) and determined that the Appellant was no longer medically eligible for Personal Care Services.
- 3) The Appellant was awarded two (2) deficits on the September 26, 2018 PAS in the areas of physical assistance with eating and inability to vacate the building in the event of an emergency.
- 4) An individual must exhibit deficiencies in at least three (3) functional areas to be determined medically eligible for Personal Care Services.
- 5) The Appellant was notified of the service termination in a Notice of Decision dated October 3, 2018 (D-2).

APPLICABLE POLICY

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

The Appellant received deficits in two (2) functional areas during her September 2018 PAS. During the hearing, the Appellant contended that she should have received additional deficits in the areas of physical assistance with dressing and grooming.

The Appellant testified that she cannot button or snap clothing, so she wears elastic waist pants and pull-over shirts. The Appellant also stated that her personal care provider applies lotion to her arms, back and legs, and cuts her toenails because she cannot bend over to do it herself. The Appellant's care provider confirmed that the Appellant cannot use buttons or snaps. She stated that she applies lotion for the Appellant and has cut her toenails since she began working with the Appellant three years ago, as the Appellant has poor balance. The Appellant, who suffers from arthritis and generalized weakness and is at risk for falls, testified that she broke her hip in 2015 and injured her knee in 2018. The KEPRO nurse testified that the Appellant reported the ability to dress and groom independently on the date of the PAS.

PAS notes indicate that the Appellant was awarded a deficit in eating because she reported the inability to cut food due to decreased hand dexterity, and a Personal Care Services Program Plan of Care (D-5) indicates that the Appellant requires partial assistance with dressing and grooming.

The Appellant testified that she believed the KEPRO nurse had assessed her a day earlier than scheduled; therefore, her care provider was not present to provide information on the date of the PAS. The KEPRO nurse testified that she assessed the Appellant on the correct date; however, no documentation was provided to confirm the appointment date.

Based on information provided during the hearing, one (1) additional deficit is awarded in the area of physical assistance with grooming. The Appellant and her witness provided credible testimony to indicate that the Appellant receives assistance with lotion application and that her physical condition prevents her from cutting her toenails. It is reasonable to believe that the Appellant cannot cut her own toenails since she has poor balance and was awarded a deficit in the functional area of eating due to decreased hand dexterity. No additional deficit is awarded in the functional area of dressing because the Appellant testified that she primarily wears elastic pants and pullover shirts in her residence.

The addition of one (1) deficit brings the Appellant's total number of deficits to three (3).

CONCLUSIONS OF LAW

- 1) To be eligible for Personal Care Services, an individual must receive three (3) functional deficits on the PAS form.
- 2) The Appellant received two (2) deficits on her September 2018 PAS.
- 3) One (1) additional deficit - physical assistance with grooming - 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), she remains medically eligible for the Personal Care Services Program.

DECISION

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

ENTERED this 29th day of November 2018.

Pamela L. Hinzman
State Hearing Officer