



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

December 19, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2565

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra R. Grueser, RN, WV Bureau of Senior Services

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

██████████,

Appellant,

v.

ACTION NO.: 18-BOR-2565

**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 December 6, 2018, on an appeal filed October 16, 2018.

The matter before the Hearing Officer arises from the September 17, 2018 decision by the Respondent to discontinue the Appellant's continuing participation in the Medicaid Personal Care Services (PCS) Program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services. Appearing as witnesses for the Department were Susan Smith, RN, KEPRO and Melody Cottrell, RN, KEPRO. The Appellant appeared *pro se*. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Personal Care Services Policy Manual, Chapter 517, §§517.13.5, 517.13.6 and 517.13.7, Medical Criteria, Service Level Criteria and Service Level Limits
- D-2 Personal Care Pre-Admission Screening (PAS) completed by KEPRO, submitted on September 16, 2018
- D-3 Personal Care PAS Medical Eligibility Summary, dated September 16, 2018
- D-4 WV PCS Medical Necessity Evaluation Request (MNER), dated July 24, 2018
- D-5 Personal Care PAS Medical Eligibility Summary, dated November 22, 2017
- D-6 Notice of Decision: Termination, dated September 17, 2018

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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) A representative from the Respondent's Utilization Management Contractor, KEPRO, completed a Personal Care Pre-Admission Screening (PAS) Form (Exhibit D-2) with the Appellant in her home on September 16, 2018, to assess her continuing medical eligibility for the Personal Care Services (PCS) Program.
- 2) Based on the information obtained from the PAS, the representative assessed the Appellant with no deficits in her ability to perform personal care activities in her home. A PCS program participant must have no fewer than three deficits in order to remain medically eligible for the program.
- 3) The Department discontinued the Appellant's eligibility for the PCS Program. The Department reported its findings to the Appellant in a Notice of Decision dated September 17, 2018 (Exhibit D-6).
- 4) The Appellant argued that she should have received seven deficits on the September 16, 2018, PAS, for vacating a building in the event of an emergency, and for the functional abilities of eating, bathing, dressing, grooming, continence and walking.

APPLICABLE POLICY

The WV Bureau of Medical Services (BMS) Personal Care Services Policy Manual §517.13.5 establishes the medical eligibility criteria for the Personal Care Services program.

§517.13.5 states as follows in pertinent part:

An individual must have three deficits as described on the Pre-Admission Screening Form (PAS) to qualify medically for the Personal Care Program. These deficits are derived from a combination of the following assessment elements on the PAS.

- #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. Continence of bowel: Level 3 or higher (must be incontinent)
 - f. Continence of 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 also may qualify for PC services if he/she has two functional deficits identified as listed above (items refer to PAS) and any one or more of the following conditions indicated on the PAS:

- #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. (a) Independently or (b) 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

As part of the yearly reevaluation of the Appellant's participation in the Personal Care Services (PCS) program, a registered nurse from the Department's Utilization Management Contractor, KEPRO, completed a PAS with the Appellant in her home on September 16, 2018. KEPRO determined that the Appellant had no deficits in her ability to perform her activities of daily living and to function in her home. PCS policy requires no fewer than three deficits for program eligibility.

The Appellant argued that she should have received seven deficits, for vacating a building in the event of an emergency, and for the functional abilities of eating, bathing, dressing, grooming, continence and walking.

Vacating a building in the event of an emergency: On this area of the September 2018 PAS, the assessing nurse recorded, "Member reports in an emergency, she would be able to vacate independently." The Department's witness, the assessing nurse who completed the PAS with the Appellant, testified that while conducting the PAS, a visitor came to the Appellant's home. She testified that the Appellant went outside and spoke to the visitor without difficulty. The Appellant testified that she could vacate her home during an emergency, but not if she were having a seizure. The Department included in its evidence the Medical Necessity Evaluation Request (MNER), a document signed by the Appellant's physician wherein he or she outlines medical diagnoses which support the Appellant's need for the PCS program. This document (Exhibit D-4) confirms a diagnosis of a seizure disorder on the Appellant's part.

Eating: On the September 2018 PAS, the assessing nurse recorded, “[Appellant] reported the ability to cut food. [Appellant] reports ability to feed self with normal utensils. [Appellant] denies use of adaptive equipment to aid in the task of eating.” The Appellant testified that she could feed herself, but she was not able to cook her food. The Department’s representative stated that food preparation was not a component of the functional ability of eating.

Bathing: On the September 2018 PAS, the assessing nurse recorded, “[Appellant] reports taking a shower. [Appellant] reports ability to transfer in and out of shower/tub. [Appellant] denies the need to have assistance with bathing. [Appellant] reports the ability to complete all aspects of bathing on her own.” The Appellant testified that on the day of the PAS, she told the assessing nurse someone had to prepare her bath because she experienced hand numbness and could not discern if her bath water was too hot or cold.

Dressing: On the September 2018 PAS, the assessing nurse wrote, “[Appellant] denies the need to have assistance with dressing upper and lower body. [Appellant] able to perform snapping, buttoning, zipping, buckling, and velcroing. [Appellant] reported occasionally requiring assistance in getting sports bra pulled down in back. Reports ability to apply own shirt/top over head, get arms in sleeves and pulling down to straighten. Reports the ability to apply socks and shoes and tie. Reports ability to apply underwear/pants without assistance.” The Appellant testified that it was difficult for her to put shirts and tops on because she had trouble reaching her arms over her head.

Grooming: On the September 2018 PAS, the assessing nurse wrote, “Member denies the need to have assistance with grooming. Denies use of lotion. Reports ability to apply own deodorant. Reports endentulous and can perform own oral care. Reports ability to cut own fingernails and toenails. Reports shaving own legs.” The Appellant testified she told the assessing nurse she did not shave her legs. She testified she showed the nurse her legs during the PAS assessment and her legs “looked like a man’s legs.”

Continence: On the September 2018 PAS, the assessing nurse wrote, “[Appellant] reported incontinence of bladder less than three times per week at this time. [Appellant] denies incontinence of bowel at this time. [Appellant] reports can perform perineal care following bowel movements.” The Appellant testified that she had bladder accidents three or more times per week.

Walking: On the September 2018 PAS, the assessing nurse wrote, “[Appellant] reported the ability to walk without hands-on assistance of one or two persons at this time. [Appellant] denies use of [medical equipment] to aide in this task. Denies any falls in the last year.” The Appellant testified that she did not deny being able to walk, but she limped a lot and did have falls. She stated she did not recall the assessing nurse asking her about her history of falls.

The Appellant did not provide testimony sufficient to establish that she should have been assessed with deficits for any of the areas described above, based on her ability to function at the time of the September 2018 PAS. There was no testimony that the Appellant would require the hands-on assistance of at least one person to vacate her home during an emergency. Testimony from the Appellant indicated that she could cut up firm foods and could feed herself without the

assistance of adaptive equipment. For bathing, the Appellant did not deny she could get into and out of the shower, but she had trouble telling if the water was too hot or cold. For dressing, the Appellant stated she had trouble with clothing requiring her to reach above her head or behind her. For grooming, the Appellant testified she did not shave her legs, but she did not indicate she could not shave her legs. The September 2018 PAS indicated the Appellant had bladder incontinence issues less than three times per week, and denied having bowel incontinence. During the assessment, the Appellant denied having any falls in her home within the previous year.

Policy requires three deficits in order to establish medical eligibility for the Personal Care Services Program. The Appellant's September 2018 PAS did not establish any deficits, and the Appellant did not provide testimony to indicate the Department was incorrect to do so.

CONCLUSIONS OF LAW

- 1) Policy requires that the Appellant receive three deficits in order to qualify for the Personal Care Services Program. The March 18, 2018 PAS fails to establish any deficits, as defined in BMS Personal Care Services Policy Manual §517.13.5.
- 2) The Appellant did not provide testimony or evidence to support her position that the Department was incorrect in establishing no deficits on the September 16, 2018 PAS.
- 3) The Department acted correctly to discontinue the Appellant's eligibility for the Personal Care Services Program.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to discontinue the Appellant's eligibility for Personal Care Services.

ENTERED this 19th Day of December 2018.

Stephen M. Baisden
State Hearing Officer