



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 31, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1259

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1259

**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 March 26, 2015, on a timely appeal filed February 5, 2015.

The matter before the Hearing Officer arises from the January 16, 2015, decision of the Respondent to discontinue the Claimant's participation in the Medicaid Personal Care Services Program.

At the hearing the Respondent appeared by Tamra Grueser, RN from the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN from West Virginia Medical Institute (WVMI). The Claimant appeared *pro se*. Appearing as witnesses for the Claimant were ██████████, caregiver with the ██████████ ██████████ and ██████████, Claimant's fiancé and caregiver. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Personal Care Services Policy Manual, Chapter 517, §§517.19.1 and 517.19.2, Medical Eligibility Determination and Medical Eligibility Criteria for Personal Care Services
- D-2 Personal Care Services Pre-Admission Screening (PAS) completed by ██████████ ██████████ Commission on Aging, dated December 22, 2014
- D-3 PAS completed by the WV Medical Institute, dated January 13, 2015
- D-4 Notice of Decision, dated January 16, 2015

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) RN [REDACTED] (RN [REDACTED] with [REDACTED] [REDACTED]) completed an assessment with the Claimant on December 22, 2014, as part of the Claimant's yearly re-evaluation for the Personal Care Services (PCS) Program. (Exhibit D-2) The Department's witness testified that based on the information obtained from the assessment form, a nurse from the WV Medical Institute (WVMI) completed a Pre-Admission Screening (PAS) for the Claimant wherein the nurse assessed her with two deficits in the areas of bathing and grooming. (Exhibit D-3)
- 2) On January 16, 2015, the Department issued a Notice of Decision terminating the Claimant's participation in the PCS Program, stating in part, "Your Pre-Admission Screening Form (PAS), indicates deficiencies in two (2) areas. Because you have less than three (3) deficits, you are not medically eligible for the Personal Care Program." (Exhibit D-4)
- 3) The Claimant contended that she should have been awarded additional deficits in the health areas of incontinence, dressing and orientation.
- 4) The Claimant was assessed at a Level 2, occasionally incontinent (less than three times per week) of bowel and bladder; a Level 2 (intermittently disoriented) in the area of orientation; and, a Level 1 (self/prompting) in the area of dressing. (Exhibit D-2)
- 5) The Department representative, Tamra Grueser (Ms. Grueser), explained that policy requires that an individual be assessed at a Level 3 or higher in the areas of incontinence and orientation: Level 3 for incontinence meaning being incontinent more than three times per week, and a Level 3 for orientation meaning that an individual is comatose or totally disoriented. In the area of dressing, an individual must be assessed at a Level 2 or higher, (physical assistance or more). (Exhibit D-1)
- 6) [REDACTED], Claimant's caregiver who was present during the assessment, reported that the Claimant has mood swings, focus issues and has difficulty concentrating, often requiring repetitive prompting. She also testified that she assists the Claimant with guiding her arms in her shirts due to the Claimant's shoulder issues, and also starts the Claimant's pants so that the Claimant can pull them up. The Claimant's fiancé also reported he assists the Claimant with dressing. It is noted that the Claimant has a diagnosis of osteoarthritis bilaterally in her shoulders. (Exhibits D-2 and D-3)
- 7) The Claimant testified that along with her difficulty in raising her arms due to her shoulder issues, she is now experiencing contractures of her right hand which is causing her more difficulty. She also testified that her incontinence is increasing.

APPLICABLE POLICY

The WV Bureau of Medical Services (BMS) Personal Care Services Policy Manual §517.19.1 and §517.19.2 establish the medical eligibility criteria for the Personal Care Services program.

§517.19.1 states as follows in pertinent part:

The Pre-Admission Screening (PAS) is used to certify an individual's medical eligibility for Personal Care service. The PAS may be completed by either an RN or a physician; however, it must be signed and dated by a physician. The PAS is valid for 60 days after the date of the physician's signature.

§517.19.2 states as follows in pertinent part:

An individual must have three (3) 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.

- #24 Decubitis; Stage 3 or 4
- #25 In the event of an emergency the individual is c) mentally unable or d) physically unable to vacate a building. A) independently and b) with supervision are not considered deficits.
- #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, bowel - Level 3 or higher (must be incontinent)
 - f. Continence, 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.)

DISCUSSION

Having only assessed the Claimant with two functional deficits in the areas of bathing and grooming, the Department terminated the Claimant's PCS program benefits. The Claimant proposed that she receive additional deficits for incontinence, dressing and orientation. Although the Claimant did not provide evidence to indicate that she should have received deficits in the areas of incontinence or orientation, the evidence showed she required assistance with dressing. The December 2014 assessment was silent as to why the Claimant was found to be able to dress

by herself or with only prompting. However, the testimony provided by the Claimant and her caregiver did show that the Claimant has difficulty with her shoulders due to her osteoarthritis and that the Claimant required assistance with dressing. A functional deficit in the area of dressing should have been awarded by the Department.

CONCLUSIONS OF LAW

1. The Department found two health area deficits on the Claimant's December 2014 PAS. The Claimant provided evidence to support her assertion that she should have received an additional deficit in the area of dressing. The Claimant met the medical eligibility criteria for Personal Care Services, as defined in BMS Personal Care Services Policy Manual §517.19.1 and §517.19.2.
2. The Department erred in terminating the Claimant's PCS program benefits.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's proposal to terminate the Claimant's Personal Care Services program benefits.

ENTERED this 31st day of March 2015.

Lori Woodward, State Hearing Officer
Member, Board of Review