



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 15, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1461

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,

Thomas E. Arnett
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-1461

**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 April 14, 2015, on a timely appeal filed February 6, 2015.

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

At the hearing the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN, West Virginia Medical Institute (WVMI). The Claimant appeared *pro se*. Appearing as witnesses for the Claimant were ██████████, Claimant's daughter/caregiver, and ██████████, RN, ██████████. 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 CCIL on January 16, 2015
- D-3 Replicated/computer-generated PAS completed by WV Medical Institute, dated January 23, 2015
- D-4 Notice of Decision dated January 27, 2015

D-5 Personal Care Services Pre-Admission Screening (PAS) completed by CCIL on March 12, 2014, and replicated/computer-generated PAS completed by WV Medical Institute, dated March 24, 2014

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) On January 27, 2015, the Claimant was notified via a Notice of Decision (D-4) that she was no longer medically eligible to participate in the Medicaid Personal Care Services (PCS) Program. This document indicates that medical eligibility requires an individual to demonstrate at least three (3) functional deficits in the assessed health areas, and the Claimant's review demonstrated only two (2) – dressing and transferring.
- 2) The Claimant and her daughter/caregiver, [REDACTED], however, contended that she should remain eligible for the program because she should have been awarded a functional deficit in bathing.
- 3) Respondent acknowledged that the Claimant demonstrated a deficit in bathing, as evidenced in the previous PAS (D-5), however, documentation included in the current assessment indicates the Claimant was able to bathe independently.
- 4) Testimony proffered at the hearing reveals that the Claimant suffers from tremors and muscle weakness, secondary to her diagnosis of Parkinson's disease. While Parkinson's is not among the diagnoses on the current evaluation (D-2), the medication list includes a prescription used to treat this condition. Moreover, the Claimant and her daughter testified that they misunderstood the question and reported the Claimant bathed independently that day. The Claimant and her daughter further explained that the Claimant typically requires assistance with bathing two (2) to three (3) times per week due to her tremors and muscle weakness.

APPLICABLE POLICY

The WV Bureau for 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.)
- #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

Evidence submitted at the hearing reveals that the Claimant was awarded two (2) functional deficits stemming from her medical assessment conducted in January 2015. Credible testimony presented at the hearing reveals that the Claimant was also demonstrating a deficit in the health area of bathing.

CONCLUSION OF LAW

Whereas three (3) health deficits have been identified, medical eligibility for the Personal Care Services Program is established.

DECISION

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

ENTERED this _____ day of April 2015.

Thomas E. Arnett
State Hearing Officer
Member, Board of Review