



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25301
(304) 746-2360, ext. 2227

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 13, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1738

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,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services
[REDACTED]

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1738

**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 May 13, 2015, on an appeal filed April 7, 2014.

The matter before the Hearing Officer arises from the March 6, 2015 decision by the Respondent to terminate the Claimant's eligibility under the Medicaid Personal Care Program.

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

Department's Exhibits:

- D-1 Personal Care Services Policy Manual §§ 517.19.1 and 517.19.2
- D-2 ██████████ Personal Care Pre-Admission Screening Form for Personal Care Services signed by ██████████, D.O. on February 27, 2015
- D-3 WVMI Independent Review, Pre-Admission Screening for Aged/Disabled Waiver Services dated March 6, 2015
- D-4 ██████████, Personal Care Pre-Admission Screening Form for Personal Care Services dated March 12, 2014
- D-5 WVMI Independent Review, Pre-Admission Screening for Aged/Disabled Waiver Services dated March 14, 2014
- D-6 Notice of Decision dated March 6, 2015

Claimant'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) On March 11, 2015, the Department issued a Notice of Decision (Exhibit D-6) to the Claimant, informing her of its proposed decision to discontinue her Personal Care Services. Based on the February 27, 2015 [REDACTED] Pre-Admission Screening (PAS) form and March 4, 2015 West Virginia Medical Institute (WVMI) Pre-Admission Screening (WVMI PAS), it was determined she did not meet the medical eligibility criteria for the program because only one (1) deficit was established in the critical health area of bathing (Exhibits D-2, D-3 and D-6). Eligibility requires deficits be established in at least three (3) of thirteen (13) critical health areas as outlined in the Medicaid Program Regulations (Exhibit D-1).
- 2) As noted in the previous finding, the Department stipulated that the Claimant demonstrated one (1) deficit - bathing. The Department, however, maintained that the medical assessment completed in March 2015 by [REDACTED], RN, West Virginia Medical Institute (WVMI), fails to identify three (3) functional deficits.
- 3) The Department's representative testified that the information contained on the March 6, 2015 WVMI PAS (Exhibit D-3) was derived from a review of information contained on the [REDACTED] PAS (Exhibit D-2).
- 4) The Claimant and her witnesses contended that she should have been awarded additional deficits in the critical health areas of dressing and grooming.
- 5) At the time of the February 27, 2015 PAS, [REDACTED], RN (Nurse [REDACTED] [REDACTED]), documented that the Claimant was assessed as a level one, self/prompting, in the areas of dressing and grooming. On March 2, 2015, the [REDACTED], submitted additional medical documentation to the Department (Exhibit D-2) entitled "Personal Care Additional Documentation Attachment". The documentation, which was completed by Nurse [REDACTED] indicated that the Claimant dressed independently "most of the time" and that the Claimant groomed independently "at times".
- 6) The Claimant testified that she is unable to dress herself and requires her daughter's assistance to fix her hair and to get her clothes and shoes.

- 7) The Claimant's witness, Nurse [REDACTED] testified that the first time she met the Claimant was during the February 2015 PAS assessment, and that no one else was present to assist the Claimant with her responses. She testified that the Claimant led her to believe she was independent in dressing and grooming, but now believes the Claimant may have overstated her abilities due to pride.
- 8) The Claimant's daughter and caregiver, [REDACTED] (Ms. [REDACTED]) testified that she assists her mother with dressing by tying her shoes and helping her put on her shirts. Ms. [REDACTED] testified that the Claimant has difficulty raising her arms due to arthritis. Ms. [REDACTED] testified that she also assists her mother with bathing, cleaning the house and prompting her to take her medications. The Claimant's daughter speculated that her mother overstated her abilities at the time of the assessment due to pride.
- 9) The PAS indicated that the Claimant was diagnosed with Coronary Artery Disease, Diabetes Mellitus - Type II, Hypertension, Hyperlipidemia, Hypothyroidism, Diabetic Neuropathy, Restless Leg Syndrome, Chronic Obstructive Pulmonary Disease and Anxiety. (Exhibits D-2 through D-4)

APPLICABLE POLICY

Personal Care Services Policy Manual 517.19.2 sets forth the medical eligibility criteria for the Personal Care Program. An individual must have three (3) deficits on the Pre-Admission Screening (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 Decubitus - 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
 - Eating ----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 - Bathing ----- Level 2 or higher (physical assistance or more)
 - Dressing ---- Level 2 or higher (physical assistance or more)
 - Grooming--- Level 2 or higher (physical assistance or more)
 - Continence (bowel, bladder) -- Level 3 or higher; must be incontinent
 - Orientation-- Level 3 or higher (totally disoriented, comatose)
 - Transfer ----- Level 3 or higher (one-person or two-person assistance in the home)
 - Walking ----- Level 3 or higher (one-person assistance in the home)

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

The Claimant and her witnesses contended that the Claimant should have been awarded additional deficits in the areas of dressing and grooming. While the Claimant's witnesses speculated that during the PAS assessment, the Claimant may have overstated her abilities due to pride, the Claimant offered no testimony or explanation for the change in her statement.

With regard to the area of dressing, at the time of the assessment, the Claimant reported she was able to dress herself most of the time. Based on her statement, the Department correctly assessed the Claimant at level one (1) self/prompting. The Claimant's caregiver, who was not present at the time of the assessment, indicated that the Claimant required assistance putting on shirts and tying her shoes due to arthritis. However, no evidence was provided that the Claimant was diagnosed with arthritis.

With regard to the area of grooming, at the time of the assessment, the Claimant reported she was able to groom herself "at times", implying that she required assistance with grooming a majority of the time. The Claimant elaborated that she required physical assistance to brush her hair and should have been assessed as a level two (2), requires physical assistance, in the area of grooming. The Department erred in failing to award the Claimant a deficit in the area of grooming.

CONCLUSIONS OF LAW

- 1) Evidence revealed that the Claimant required physical assistance in the functional area of grooming at the time of the February 27, 2015 PAS and the March 6, 2015 WVMi PAS. Policy requires that a deficit be awarded when the assessed individual requires physical assistance or more in the functional area of grooming. With the award of a deficit in the area of grooming and in addition to the stipulated deficit in the area of bathing, the Claimant is awarded a total of two (2) deficits.
- 2) Whereas the Claimant had only two (2) critical health area deficits and medical eligibility policy specifies that there must be three (3) deficits, the Claimant does not meet the medical eligibility criteria for the Personal Care Services Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate Claimant's benefits and services through the Personal Care Services Program.

ENTERED this ____ Day of May 2015.

**Donna L. Toler
State Hearing Officer**