



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

December 9, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3396

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

cc: Tamra Grueser, RN, BoSS
[REDACTED] Co. Committee on Aging
Sherriff [REDACTED]

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3396

**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 3, 2015, on a timely appeal filed November 2, 2015.

The matter before the Hearing Officer arises from the October 19, 2015, decision of the Respondent to discontinue the Appellant's participation in the Medicaid Personal Care Services Program.

At the hearing the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN, APS Healthcare. The Appellant was present and was represented by Sherriff ██████████. Appearing as witness for the Appellant was ██████████, RN, ██████████ County Committee on Aging. 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), dated October 13, 2015
- D-3 Notice of Decision, dated October 19, 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] with [REDACTED] County Committee on Aging (RN [REDACTED] completed an assessment with the Appellant on October 13, 2015, as part of the Appellant's yearly re-evaluation for the Personal Care Services (PCS) Program. (Exhibit D-2)
- 2) On October 19, 2015, the Respondent issued notice to the Appellant that his participation in the PCS program would end because medical eligibility for the program was not met due to the finding of only one (1) deficit in the health area of bathing. (Exhibit D-3)
- 3) The Appellant suffers from severe debilitating depression.
- 4) The Appellant requires physical assistance with grooming.
- 5) The Appellant requires physical assistance with dressing.
- 6) The Appellant requires physical assistance with medication administration

APPLICABLE POLICY

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.

| | |
|--|--|
| #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 | Level 3 or higher (must be incontinent) |
| Continence, Bladder | Level 3 or higher (must be incontinent) |
| Orientation | Level 3 or higher (totally disoriented, comatose). |
| Transferring | 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.) |

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 (1) 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 c) mentally unable or d) physically unable to vacate a building. a) Independently and 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

Having only assessed the Appellant with one functional deficit in the area of bathing, the Respondent terminated the Appellant's PCS program benefits. The Appellant's conservator, [REDACTED] (Sherriff [REDACTED]) testified that the Appellant suffers from severe debilitating depression and cannot function on his own. Without daily supervision, the Appellant does not eat, dress, bathe, groom, or take his medications. Sherriff [REDACTED] testified that he has had to physically assist the Appellant to dress and groom himself, and assist him in medication administration. The Appellant's witness, [REDACTED], is his case manager who conducted the PAS assessment. She testified that there are times when the Appellant needs physical assistance with shaving and dressing due to his debilitating depression and knee problems, which is also noted in the PAS assessment itself.

The Appellant was assessed as a Level 1 – self/prompting – in the areas of grooming and dressing. Credible testimony from the Appellant's case manager and conservator indicated that physical assistance in the areas of grooming and dressing was required. Based on the information provided, the Appellant should have been assessed as a Level 2 in the areas of grooming and dressing, which are both additional deficits he should have received.

CONCLUSION OF LAW

With the addition of deficits in the areas of grooming and dressing, the Appellant has three (3) deficits. Therefore, he continues to meet the medical eligibility criteria necessary to receive Personal Care Services as defined by policy.

DECISION

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

ENTERED this 8th day of December 2015.

Lori Woodward, State Hearing Officer