



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

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

February 9, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3668

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

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

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

██████████,

Claimant,

v.

ACTION NO.: 14-BOR-3668

**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 January 15, 2015, on an appeal filed November 13, 2014.

The matter before the Hearing Officer arises from the November 4, 2014, decision by the Respondent to discontinue the Claimant's participation in the Medicaid Personal Care Services Program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, West Virginia Medical Institute (WVMI). The Claimant 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, §§517.19.1 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 ██████████, dated October 30, 2014
- D-3 PAS completed by the WV Medical Institute, dated November 3, 2014
- D-4 Notice of Decision, dated November 4, 2014

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) A nurse with [REDACTED] of [REDACTED], completed an assessment (Exhibit D-2) with Claimant on October 30, 2014, as part of the Claimant's yearly reevaluation for the Personal Care Services (PCS) Program. 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 (Exhibit D-3) wherein the nurse assessed her with one deficit, for the functional ability of bathing. The Department terminated the Claimant's participation in the PCS Program. The Department reported its findings to the Claimant in a Notice of Decision dated November 4, 2014 (Exhibit D-4).
- 2) The Claimant contended that the WVMI nurse who completed the Department's PAS should have awarded her with four additional deficits for vacating her home in the event of an emergency, for the functional abilities of grooming and walking, and for administering medications.
- 3) The PCS assessment (Exhibit D-2) indicates the Claimant was assessed as being able to vacate her home in the event of an emergency, so she did not receive a deficit in this area of the PAS. On the section of the assessment labeled "Personal Care Additional Documentation Attachment," the assessing nurse has written regarding vacating, "[Claimant] can vacate the premises on her own." The Claimant testified that she could vacate her home during an emergency if she were not experiencing back problems. She testified that if she were having back problems, she would not be able to get off the couch in her home without someone there to assist her.
- 4) The PCS assessment (Exhibit D-2) indicates the Claimant was assessed at Level 1, "self/prompting," for the functional ability of grooming, so she did not receive a deficit for this ability. On the section of the assessment labeled "Personal Care Additional Documentation Attachment," the assessing nurse has written regarding grooming, "[Claimant] states she can groom herself." The Claimant testified that her homemaker washes her hair sometimes, as well as brushing, straightening and styling it.
- 5) The PCS assessment (Exhibit D-2) indicates the Claimant was assessed as walking independently, so she received no deficit for this functional ability. On the section of the assessment labeled "Personal Care Additional Documentation Attachment," the assessing nurse has written regarding walking, "[Claimant] states she can ambulate on her own. She does have difficulty several days out of the week due to her chronic back pain, as stated by [Claimant]." The Claimant testified that she could not walk or stand for long periods of time. She stated that in her home, she could walk from her living room to her kitchen in

order to get a drink. She stated that when she went shopping, she used the electric wheelchairs certain businesses make available for their customers.

- 6) The PCS assessment (Exhibit D-2) indicates the Claimant was assessed as being capable of administering her medications, so she did not receive a deficit in this area of the PAS. On the section of the assessment labeled “Personal Care Additional Documentation Attachment,” the assessing nurse has written regarding administering medications, “[Claimant] is able to take her meds on her own.” The Claimant testified that sometimes in the morning, she forgets to take her medications and her homemaker has to ask her if she has taken them.

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

The Claimant proposed that she receive additional deficits for vacating a building in the event of an emergency, the functional abilities of grooming and walking, and administering medications. The Claimant did not provide evidence or testimony to indicate that she should have received deficits in any of these areas. She testified that she could walk in her home without assistance, and she only needed help with prompts or reminders to take her medications. Although she testified that there were times when she could not vacate her home due to back problems and that her homemaker helped her with grooming, the Department did not have access to this information when evaluating the assessment from [REDACTED].

CONCLUSION OF LAW

The Department assessed Claimant with one deficit on the October 30, 2014, Personal Care Services Screening Form. The Claimant did not provide evidence to support her assertion that she should have received additional deficits for vacating a building in the event of an emergency, grooming, walking or administering medications. The Claimant does not meet the medical eligibility criteria for Personal Care Services, as defined in BMS Personal Care Services Policy Manual §517.19.1 and §517.19.2.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to deny the Claimant's application for Personal Care Services.

ENTERED this 9th Day of February 2015.

Stephen M. Baisden
State Hearing Officer