



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
416 Adams St., Suite 307
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 18, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1321

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

cc: Tamra Grueser, RN, BoSS / CCIL, [REDACTED] WV / [REDACTED]

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1321

**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 13, 2016, on a timely appeal filed February 18, 2016.

The matter before the Hearing Officer arises from the February 12, 2016 decision of the Respondent to propose termination of the Appellant'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, ██████████. The Appellant was represented by her foster parents, ██████████, and ██████████, Advocate, ██████████. Appearing as a witness for the Appellant was ██████████, WVU Center for Excellence in Disabilities. 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 Pre-Admission Screening (PAS) Forms (two PAS documents signed by two different physicians) dated 1/19/16
- D-3 Personal Care Pre-Admission Screening (PAS) Form dated 2/6/15 - with additional medical documentation
- D-4 Personal Care Pre-Admission Screening (PAS) Form dated 5/14/15 – with additional medical documentation
- D-5 Notice of Decision dated 5/20/15

D-6 Correspondence dated 5/19/15 from [REDACTED], RN, CCIL
D-7 Notice of Decision dated 2/12/16

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 February 12, 2016, Appellant was notified via a Notice of Decision (D-7) 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 Appellant's review demonstrated only two (2) – vacating a building [in the event of an emergency] and administering medications.
- 2) As a matter of record, Respondent stipulated that the two (2) Personal Care Pre-Admission Screening (PAS) Forms completed by two (2) different physicians on January 19, 2016, confirmed functional deficits in vacating a building and medication administration, but pursuant to policy, no additional functional deficits were identified. Respondent acknowledged that previous assessments (Exhibits D-3 and D-4) included additional medical documentation that supported additional functional deficits.
- 3) The Appellant's representatives contended, however, that she should remain eligible for the PCS program because she should have been awarded a functional deficit in eating, bathing, grooming and incontinence.
- 4) Testimony proffered at the hearing reveals that the 22-year-old Appellant presents a diagnosis of Cystic Fibrosis and Intellectual Disability (formerly Mental Retardation). She is reported to function on a second (2nd)-grade level and has underdeveloped fine motor skills. As a result, the Appellant requires physical assistance when eating because she is unable to cut her food. In addition, she requires physical assistance with grooming – she is unable to wash and rinse her hair, shave, or adequately care for her feminine needs. Specific to the area of bathing, the Appellant is unable to adequately wash her back and bottom, and requires physical assistance to ensure she is thoroughly bathed. Testimony offered in support of an incontinence deficit reveals that the Appellant must take a medication to help her with digestion, which causes her to be incontinent of bowel two (2) or three (3) times per week.

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 Appellant was awarded two (2) functional deficits stemming from her medical assessment conducted in January 2016. Credible testimony presented at the hearing reveals that the Appellant was also demonstrating functional deficits in the areas of eating (requires physical assistance to cut her food), grooming (unable to wash/rinse her hair, shave, or attend to feminine hygiene needs) and that she is unable adequately bathe herself without hands-on physical assistance. Testimony received in support of a functional deficit in bowel incontinence indicates that episodes occur two (2) or three (3) times per week as a result of the medication she must take to help with digestion. Policy, however, requires that a

deficit can only be awarded if the individual is incontinent (Level 3) at all times. As a result, a functional deficit in bowel incontinence was not established.

CONCLUSION OF LAW

- 1) Pursuant to policy, an individual must demonstrate three (3) functional deficits to qualify for the Medicaid PCS Program.
- 2) Two (2) functional deficits were identified during the January 2016 medical assessment (PAS) and stipulated by Respondent – vacating a building and administering medications.
- 3) As a result of the evidence submitted at the hearing, three (3) additional functional deficits were identified – eating, bathing and grooming.
- 4) Whereas the Appellant is demonstrating five (5) functional deficits, medical eligibility for participation in the PCS program is established.

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 _____ day of April 2016.

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