



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

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

March 3, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1073

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

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

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-1073

**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 March 2, 2017, on an appeal filed January 13, 2017.

The matter before the Hearing Officer arises from the November 3, 2016, decision by the Respondent to discontinue the Appellant'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 (WV BoSS). Appearing as a witness for the Department was ██████████, RN, ██████████. The Appellant appeared *pro se*, by her representative ██████████, RN, of ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Personal Care Services Policy Manual, Chapter 517, §§517.7.2, 517.7.3 and 517.7.4, Medical Criteria, Service Level Criteria and Service Level Limits for Personal Care Services
- D-2 Personal Care Pre-Admission Screening (PAS) Form, dated August 5, 2016
- D-3 Personal Care Pre-Admission Screening (PAS) Form, dated June 6, 2015
- D-4 Notice of Decision, dated November 3, 2016
- D-5 Notice of Decision, dated November 3, 2016, returned to WV BoSS by Postal Service

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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) [REDACTED] of [REDACTED] WV, submitted to WV BoSS a Personal Care Pre-Admission Screening (PAS) (Exhibit D-2) on the Appellant's behalf on October 12, 2016, as part of the Appellant's yearly reevaluation for the Personal Care Services (PCS) Program.
- 2) Based on information from the PAS, the Department assessed the Appellant with no deficits. In order to remain eligible for the PCS Program, the Appellant's PAS needed to demonstrate three deficits.
- 3) The Department terminated the Appellant's participation in the PCS Program. The Department reported its decision to the Appellant in a Notice of Decision dated November 3, 2016 (Exhibit D-4).
- 4) The Appellant's representative contended that the Appellant should have been awarded eight deficits on the October 2016 PAS, for vacating her home in the event of an emergency, for the functional abilities of grooming, continence, transferring and walking, and for administering medications.

APPLICABLE POLICY

The WV Bureau of Medical Services (BMS) Personal Care Services Policy Manual §517.7.2 establishes the medical eligibility criteria for the Personal Care Services program.

§517.7.2 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

As part of the yearly reevaluation of the Appellant's participation in the Personal Care Services (PCS) program, the Appellant's primary care physician's office submitted a PAS to her home health care provider, [REDACTED], who in turn submitted it to WV BoSS. Based on the information from the PAS, West Virginia's health care management contractor, [REDACTED] determined Appellant had no deficits. PCS policy requires no fewer than three deficits for program eligibility.

The Appellant's representative, a registered nurse from [REDACTED], testified that the PAS was completed by a nurse-practitioner who works at the office of the Appellant's primary-care physician. She testified that the nurse-practitioner did not complete the PAS properly. The October 2016 PAS (Exhibit D-2) indicates the Appellant was assessed at Level 1 for each functional ability listed on the document, meaning that the Appellant had no difficulties with any of her activities of daily living.

The Appellant's representative stated that the Appellant's PAS completed on June 6, 2015, for her previous yearly review (Exhibit D-3) indicated she had numerous medical conditions which created difficulties in performing her activities of daily living. The Department's representative agreed that there was a great disparity between the June 2015 PAS and the October 2016 PAS.

Although each PAS is evaluated individually, without consideration of past assessments, the disparity between the October 2016 PAS and the June 2015 PAS supports the Appellant's position that the October 2016 PAS may not be a reliable representation of the Appellant's medical situation. For this reason, the denial of Personal Care Services for the Appellant is remanded to the Department to make a new determination of the Appellant's eligibility for the program based on a new PAS completed by a health care professional of the Appellant's choice. The Appellant retains the right to appeal a subsequent unfavorable decision.

CONCLUSION OF LAW

The Department assessed the Appellant's continuing eligibility for the Personal Care Services program on an unreliable PAS. This matter is remanded to the Respondent to make a new

determination of the Appellant's eligibility for the Personal Care Services program based on a proper presentation of her medical documentation.

DECISION

It is the decision of the State Hearing Officer to REMAND this matter to the Department to reevaluate the Appellant's eligibility for the Personal Care Services program based on reliable medical documentation.

ENTERED this 3rd Day of March 2017.

**Stephen M. Baisden
State Hearing Officer**