

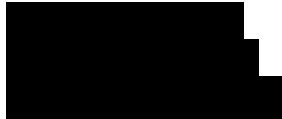


State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 West Washington Street  
Charleston, WV 25313

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

June 8, 2017



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-1623

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,

Natasha Jemerison  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra Grueser, RN

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

█, A JUVENILE,

**Appellant,**

v.

**Action Number: 17-BOR-1623**

**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 █, A JUVENILE. 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 June 1, 2017, on a timely appeal filed April 4, 2017.

The matter before the Hearing Officer arises from the March 24, 2017 decision of the Respondent to deny the Appellant's application for Personal Care Services (PCS).

At the hearing the Respondent appeared by Tamra Grueser, RN. Appearing as witnesses for the Respondent were Teresa McDonough, Program Manager and Kaluwa Schoen, Quality Assurance Officer. The Appellant was represented by her parents, █. Appearing as a witness for the Appellant was her grandmother, █. 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 and 517.14
- D-2 Personal Care Pre-Admission Screening (PAS) forms, dated December 28, 2016
- D-3 Personal Care Pre-Admission Screening (PAS) forms and summary, dated January 5, 2017
- D-4 Member notes, dated March 2017 through April 2017
- D-5 Notice of Decision, dated March 24, 2017

**Appellant's Exhibits:**

- A-1 Medical history and evaluations

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) The Appellant is a two-year-old child with numerous health conditions which have prevented her from reaching the same age appropriate milestones as other children her age. (A-1)
- 2) On December 28, 2016, the Appellant completed a Pre-Admission Screening (PAS), and she was awarded ten (10) deficits in the following areas: Eating, Bathing, Dressing, Grooming, Continence, Transferring, Walking, Wheeling, Vacating a building, and Administering medication. (D-2 and D-3)
- 3) On March 24, 2017, the Appellant was notified that she was medically ineligible for the PCS program, because PCS do not replace the age appropriate care that any child would need. (D-5)

### **APPLICABLE POLICY**

The WV Bureau for Medical Services (BMS) Personal Care Services Policy Manual §517 explains that Personal Care Services (PCS) are available to assist an eligible member to perform activities of daily living and instrumental activities of daily living in the member's home, place of employment, or community. There are no age restrictions for members to be eligible for PC services. However, PC services do not replace the age appropriate care that any child would need.

BMS Personal Care Services Policy Manual §517.19.2 establishes the medical eligibility criteria for the Personal Care Services program. 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**

As part of the PCS application process, a PAS was completed to determine the Appellant's medical eligibility for the PCS program. On March 24, 2017, the Appellant was notified that she was medically ineligible for the PCS program, because PCS do not replace the age appropriate care that any child would need.

Personal Care Services (PCS) are available to assist an eligible member to perform activities of daily living and instrumental activities of daily living in the member's home, place of employment, or community. There are no age restrictions for members to be eligible for PCS. However, PCS do not replace the age appropriate care that any child would need. An individual must have three (3) deficits as described on the Pre-Admission Screening Form (PAS) to qualify medically for the Personal Care Program.

The Appellant's parents, [REDACTED], represented the Appellant at the hearing. The Appellant is a two-year-old child with numerous health conditions which has prevented her from reaching the same age appropriate milestones as other children her age. Mrs. [REDACTED] stated that they are requesting PCS for assistance with the Appellant's daily living, not to babysit the Appellant. Mrs. [REDACTED] stated the Appellant is unable to self-feed, hold a bottle, grasp objects, hold her head up, roll over, crawl and walk. She stated the Appellant requires the daily use of several types of medical equipment, such as braces and special seats. The Appellant's witness and grandmother, [REDACTED], added that the Appellant requires constant assistance with movement, stretching, and head support. Mr. and Mrs. [REDACTED] also argued that the Appellant was awarded ten (10) deficits on the PAS, but she was only required by policy to have three (3) to be medically eligible for the PCS program.

The Department's representative, Tamra Grueser, argued that PCS cannot replace the age appropriate care that any child the Appellant's age would need. She argued that the assistance that the Appellant's parents are requesting are tasks that any parent would normally be responsible to complete. Ms. Grueser and the Department's witness, Tereasa McDonough, both indicated that PCS employees cannot offer skilled services, like stretching and assisting with the Appellant's medical equipment. Ms. Grueser also stated that the deficits awarded to the

Appellant were in areas that most children the Appellant's age cannot perform, and therefore should not be the basis of whether the Appellant is medically eligible for the PCS program.

The PCS policy fails to establish what should be considered age appropriate care for children applying for the PCS program. The Department's representative was correct in her determination that most children the Appellant's age would meet three (3) or more deficits on the PAS, because the PAS evaluates many skills that two-year-old children have not yet learned. However, the functionality abilities of eating, transferring, and walking are milestones the Appellant has failed to reach that other children her age without disabilities have reached. Appellant is unable to perform these skills on her own, so they cannot be considered age appropriate care. Because the Appellant has three (3) deficits in areas that are not considered age appropriate care, she is medically eligible for the PCS program.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, an individual must demonstrate three (3) functional deficits to medically qualify for the PCS program.
- 2) There are no age restrictions for members eligible for PC services. However, PC services do not replace the age appropriate care that any child would need.
- 3) Whereas the Appellant is demonstrating three (3) functional deficits in areas that are not age appropriate care, 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 decision to deny the Appellant's application for the Personal Care Services program.

**ENTERED this 8<sup>th</sup> day of June 2017.**

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Natasha Jemerison  
State Hearing Officer  
Member, Board of Review