

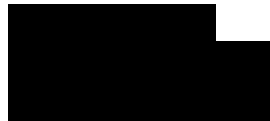


**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661**

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

August 11, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1869

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

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-1869

**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 August 9, 2017, on an appeal filed May 19, 2017. This hearing originally was scheduled for July 20, 2017, but was rescheduled at the Appellant's request.

The matter before the Hearing Officer arises from the May 10, 2017, decision by the Respondent to discontinue the Appellant's participation in the Medicaid Personal Care Services (PCS) 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*. 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 March 31, 2017
- D-3 Personal Care Pre-Admission Screening (PAS) Form, dated March 15, 2016
- D-4 Notice of Decision, dated May 10, 2017
- D-5 Personal Care Pre-Admission Screening (PAS) Form, dated March 31, 2017, with attached Member Assessment notes

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 (hereinafter [REDACTED]), submitted to WV BoSS a Personal Care Pre-Admission Screening (PAS) (Exhibit D-2) on the Appellant's behalf on March 31, 2017, 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 one deficit, for the functional ability of continence. 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 May 10, 2017 (Exhibit D-4).
- 4) The Appellant contended that she should have been awarded six additional deficits on the March 2017 PAS, for vacating her home in the event of an emergency, for the functional abilities of bathing, dressing, grooming and transferring, 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 home health care provider, [REDACTED] completed a PAS with the Appellant in her home on March 31, 2017. [REDACTED] submitted the PAS to the Appellant's primary care physician, who approved and forwarded it to West Virginia's health care management contractor, [REDACTED]. [REDACTED] determined Appellant had one deficit, for the functional ability of continence. PCS policy requires no fewer than three deficits for program eligibility.

The Appellant testified that she should have received six additional deficits on her March 2017 PAS for vacating her home in the event of an emergency, for the functional abilities of bathing, dressing, grooming and transferring, and for administering medications.

The Department's representative testified that the March 2017 PAS was approved by a different physician than the one who completed the PAS for the previous year, which was completed on March 15, 2016 (Exhibit D-3). She testified that the Appellant was medically eligible for the PCS program in 2016. She testified that on the March 2017 PAS, the physician who approved it changed the [REDACTED] nurse's evaluation on several areas on the PAS wherein deficits may be derived, lowering the deficit level so that deficits were not awarded in these areas. The physician initialed the changes to indicate that she had made them. The PAS indicates the physician changed the nurse's evaluation for the functional abilities of bathing, dressing, grooming and transferring. Other functional abilities also were changed but the Appellant specified these four functional abilities as areas wherein she thought she should have received deficits.

The Department's representative submitted into evidence the nurse's evaluation notes (Exhibit D-5) which was not included with the first version (Exhibit D-2). These nursing notes clearly showed that the Appellant requires one-person assistance with bathing, dressing and grooming.

The nurse's evaluation notes record that the Appellant requires assistance getting in and out of the shower and washing her back and lower body. The notes record that the Appellant has difficulty dressing herself, and the Appellant testified that when she experiences neuropathic tingling in her hands, she cannot fasten buttons, snaps or buckles in order to dress herself. Additionally, the original version of the March 2017 PAS identifies the Appellant as a diabetic, and as such she requires assistance with her fingernails and toenails. Although the nursing notes

indicate that the Appellant requires one-person assistance when toileting, she is able to transfer with a cane elsewhere.

Therefore, the submitted evidence and testimony supports that the Appellant should have received additional deficits for bathing, dressing and grooming. The evidence and testimony did not support the Appellant's argument that she should have received additional deficits for vacating the building in the event of an emergency, transferring or administering medications. However, the Appellant initially received one deficit on the March 2017 PAS, for continence. With the addition of these three additional deficits, she meets the medical eligibility for the Personal Care Services program.

CONCLUSION OF LAW

The Department assessed the Appellant with one deficit on the March 31, 2017, PAS. Testimony and evidence support her assertion that she should have received additional deficits for bathing, dressing and grooming. With the addition of these deficits, the Appellant meets the medical eligibility criteria for Personal Care Services, as defined in BMS Personal Care Services Policy Manual §517.7.2.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Department's proposal to discontinue the Appellant's participation in the Personal Care Services Program.

ENTERED this 11th Day of August 2017.

Stephen M. Baisden
State Hearing Officer