



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
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Jolynn Marra
Interim Inspector
General

May 23, 2019



RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-1364

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: [REDACTED], [REDACTED]
Tamra Grueser, Bureau of Senior Services

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

██████████,

Appellant,

v.

ACTION NO.: 19-BOR-1364

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on April 10, 2019, on an appeal filed March 1, 2019.

The matter before the Hearing Officer arises from the February 11, 2019 determination by the Respondent to deny the Appellant medical eligibility for participation in the Medicaid Personal Care Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as witness for the Respondent was Cristy Bock, RN, KEPRO. The Appellant was present and was represented by ██████████, his ██████████ Caretaker. Appearing as a witness for the Appellant was ██████████, RN, Coordinating Council for Independent Living (CCIL). All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau of Medical Services (BMS) Manual §§ 517.13.5 – 517.13.8
- D-2 DHHR Notice of Decision, dated February 11, 2019
- D-3 KEPRO Personal Care Pre-Admission Screening (PAS), completed February 8, 2019
- D-4 Medical Necessity Evaluation Request, dated January 16, 2019
- D-5 Medical Eligibility PAS Summary, dated January 18, 2018

Appellant'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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant is a participant in the Medicaid Personal Care Services (PCS) Program and receives PCS through the Coordinating Council for Independent Living (CCIL) and [REDACTED] (Exhibits D-2 and D-5).
- 2) On January 18, 2018, the Respondent's witness, Cristy Bock (Nurse Bock), completed a PAS to determine the Appellant's medical eligibility for PCS participation (Exhibit D-5).
- 3) The Appellant was awarded deficits in the functioning areas of *eating, bathing, dressing, and grooming* (Exhibit D-5).
- 4) On February 8, 2019, the Respondent's witness, Cristy Bock (Nurse Bock), completed a PAS to determine the Appellant's medical eligibility for continued PCS participation (Exhibits D-1 and D-2).
- 5) The Appellant's witnesses, [REDACTED] and [REDACTED] (Nurse [REDACTED]), were present during completion of the February 8, 2019 PAS (Exhibit D-3).
- 6) On February 11, 2019, the Respondent issued a notice advising the Appellant that his participation in PCS would be terminated due to being found medically ineligible for PCS by failing to demonstrate deficits in at least three (3) critical areas on the PAS (Exhibit D-2).
- 7) The Appellant was awarded a deficit in the functioning area of *eating* (Exhibit D-2).
- 8) The Appellant was awarded a deficit in the functioning area of *grooming* (Exhibit D-2).
- 9) The Appellant required prompting, supervision, and physical assistance washing hair, drying off, and transferring when *bathing* (Exhibit D-3).
- 10) The Appellant required physical assistance with fasteners and putting on shoes when *dressing* (Exhibit D-2).
- 11) The Appellant required physical assistance when *transferring* in and out of the shower (Exhibit D-3).
- 12) The Appellant required physical assistance and guidance when *walking* to prevent falls and walking into walls.

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §517.13 Program Eligibility provides in part:

To be eligible for the Personal Care Program, the applicant must be medically eligible.

BMS Manual §517.13.1 Medical Eligibility Determination provides in part:

The Utilization Management Contractor (UMC) uses the Pre-Admission Screening (PAS) tool to certify an individual's medical eligibility for PC services and determine the level of service required. The member must demonstrate three deficits, based on the presence and level of severity of functioning deficits, possibly accompanied by certain medical conditions to be determined medically eligible for PCS.

BMS Manual §517.13.5 Medical Criteria provides in part:

An individual must have three deficits as described on the PAS form to qualify medically for PCS.

- #26. Functioning abilities of an individual in the home ...
 - 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 [emphasis added] or more) ...
 - h. Transferring- Level 3 or higher (at least one person assistance in the home)
 - i. Walking- Level 3 or higher (one-person assistance in the home)

DISCUSSION

The Appellant is a recipient of PCS. On February 8, 2019, KEPRO conducted a PAS and issued a notice on February 11, 2019 advising the Appellant that he was ineligible for continued PCS due to lacking deficits in at least three critical areas. The Appellant was awarded two deficits in the functioning areas of *eating* and *grooming*. The Appellant's representative did not identify specific areas in which the Appellant should have been awarded deficits but the Appellant's representative and witness provided testimony in support of the argument that the Appellant should have been assessed as having deficits in the areas of *eating*, *bathing*, *dressing*, *grooming*, *transferring*, and *walking*. The Appellant's representative did not contest the Respondent's assessment findings in the areas of *decubitus*, *skilled needs*, *vacating*, *medication administration*, *continence*, *orientation*, *wheeling*, *vision*, *hearing*, or *communication*.

The Respondent bears the burden of proof and had to demonstrate that the Appellant did not present with deficits in three functioning areas at the time of the PAS assessment. During the hearing, based on the testimony of the Appellant's witnesses, the Respondent conceded that the Appellant should have been awarded additional deficits in the areas of *bathing*, *transferring*, and *walking*.

Dressing

To be awarded a deficit in the functioning area of *dressing*, at the time of the PAS, the Appellant had to be assessed on the PAS as a Level 2- physical assistance or more. During the PAS, the Appellant reported that he required prompting and supervision while dressing and reported that he required assistance “with choosing correct clothes for the weather, etc.” On the PAS, the Appellant was assessed as a Level 1- self/prompting. No testimony or evidence was provided by the Respondent to demonstrate whether the Appellant required physical assistance while dressing or whether he had the ability to physically complete dressing activities independently at the time of the PAS. The narrative of the PAS did not address whether the Appellant was independently capable of completing tasks related to *dressing*.

During the hearing, the Appellant’s witness, Nurse [REDACTED] testified that the Appellant required assistance with all fasteners. The Appellant’s caretaker, [REDACTED] testified that Appellant required her physical assistance putting on shoes. Nurse [REDACTED] testified that the Appellant’s abilities had not changed from the previous January 18, 2018 PAS, at which time the Appellant was awarded a deficit in the functioning area of *dressing*. The Respondent did not refute the accuracy of the Appellant’s witnesses’ testimony. Because the Appellant requires physical assistance with fasteners and shoes, the Appellant should have been awarded a deficit in the functioning area of *dressing*.

The preponderance of evidence presented during the hearing demonstrated that the Appellant should have received additional deficits in the functioning areas of *bathing*, *transferring*, *walking* and *dressing*. Because the Appellant presented at the time of the PAS with deficits in more than three functioning areas, the Respondent’s determination that the Appellant was ineligible for PCS was incorrect.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid Personal Care Services program, the applicant must demonstrate deficits in at least three (3) functioning areas outlined on the Pre-Admission Screening (PAS).
- 2) At the time of the February 8, 2019 PAS, the Appellant was assessed with two (2) qualifying functional deficits in the areas of *eating* and *grooming*.
- 3) The Respondent conceded to additional functional deficits in the areas of *bathing*, *transferring*, and *walking*.
- 4) The preponderance of evidence demonstrated that the Appellant should have been awarded an additional deficit in the area of *dressing*.
- 5) The Appellant has a total of six (6) qualifying functional deficits and is medically eligible for participation in the Medicaid Personal Care Services program.

- 6) The Respondent incorrectly denied the Appellant's medical eligibility for the Medicaid Personal Care Services program.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision to deny the Appellant medical eligibility for the Medicaid Personal Care Services program.

ENTERED this 23rd day of May 2019.

Tara B. Thompson
State Hearing Officer