



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

May 1, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:19-BOR-1426

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Senior Services

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

██████████,

Appellant,

v.

Action Number: 19-BOR-1426

**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 23, 2019, on an appeal filed March 14, 2019.

The matter before the Hearing Officer arises from the February 11, 2019, decision by the Respondent to deny medical eligibility for Personal Care Services.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. Appearing as a witness for the Respondent was Allison Coleman Porter, RN with KEPRO. The Appellant appeared *pro se*. Appearing as a witness was ██████████, the Appellant's granddaughter. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Policy Manual §517.13.5
- D-2 Notice of Denial dated February 11, 2019
- D-3 Personal Care Pre-Admission Screening dated February 11, 2019

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 underwent a medical assessment to determine medical eligibility for Personal Care Services in February 2019.
- 2) The Pre-Admission Screening (PAS) was completed for the Appellant on February 11, 2019. The Appellant was found to have a deficit in the area of dressing (Exhibit D-3).
- 3) Policy requires the presence of three (3) deficits to be medically eligible for Personal Care Services (Exhibit D-1).
- 4) The Respondent notified the Appellant on February 11, 2019, that she did not meet the criteria to receive services under the Personal Care Program (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §517.13.5 states an individual must have three deficits as described on the PAS form to qualify medically for the Personal Care Program. These deficits are derived from a combination of the following assessment elements on the PAS.

<u>Section</u>	<u>Observed Level</u>
#26	Functional abilities observed in the home
a)	Eating Level 2 or higher (physical assistance or more)
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, Level 3 or higher (must be incontinent)
	Bowel,
f)	Bladder
g)	Orientation Level 3 or higher (totally disoriented or comatose)
h)	Transferring Level 3 or higher (one-person or two-person assistance in the home)
i)	Walking Level 3 or higher (one-person or two-person assistance in the home)
j)	Wheeling Level 3 or higher (must be Level 3 or Level 4 on walking to use Level 3 or 4 for wheeling. Do not count outside of the home)

An individual may also qualify for Personal Care Services if he or she has two functional deficits identified as listed above (items refer to PAS) and any one or more of the following conditions indicated on the PAS:

<u>Section</u>	<u>Observed Level</u>
#24	Decubitus, 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

- #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

Pursuant to policy, an individual must have at least three (3) deficits as derived from the PAS assessment to qualify for Personal Care Services. The Appellant was found to have only one (1) deficit as a result of the February 2019 medical assessment.

The Appellant's granddaughter, [REDACTED], and Allison Coleman Porter, nurse reviewer, gave testimony regarding the Appellant's abilities regarding the areas of eating, bathing, bowel incontinence, transferring, walking and medication administration.

Eating

Ms. [REDACTED] testified that the Appellant occasionally has difficulty swallowing and she will cut her foods for her. Ms. [REDACTED] reported she cuts the Appellant's food approximately once a week.

Bathing

Ms. [REDACTED] reported that she assists the Appellant with washing her back and assists the Appellant getting into and out of the shower. Nurse Porter documented in the February PAS that the Appellant denied needing any assistance in bathing.

Bowel Incontinence

Ms. [REDACTED] testified that the Appellant has accidents of the bowel 3-4 times a month and requires assistance with perineal care after these accidents. Nurse Porter documented that the Appellant reported bowel incontinence occurring less than three times a week.

Transferring

Ms. Toney reported that the Appellant requires physical assistance with transferring 2-3 times a week. Nurse Porter documented that the Appellant reported using furniture and her surroundings to assist with transferring, denying the need for physical assistance.

Walking

Ms. [REDACTED] testified that the Appellant's knees sometimes "give out" and Ms. [REDACTED] will physically support the Appellant when walking to prevent her from falling. Ms. [REDACTED] stated she physically assists the Appellant with walking 2-3 times a week. Nurse Porter documented that the Appellant denied physical assistance with walking and denied the use of assistive devices, reporting the use of her surroundings to walk.

Medication Administration

Ms. [REDACTED] testified that the Appellant needs assistance with preparing her pill planner due to poor vision and the inability to read the instructions. Ms. [REDACTED] stated the Appellant is able to administer

her own insulin injections. Nurse Porter documented the Appellant's ability to self-administer her insulin injections and pill medications.

The Appellant was assessed as a Level 1 in eating, self/prompting. The Appellant has the ability to feed herself, and although the Appellant's granddaughter reported cutting the Appellant's food occasionally, the Appellant was correctly assessed as a Level 1 in this area, which is not a deficit.

The Appellant was assessed as a Level 1 in bathing. Testimony during the hearing indicated that the Appellant requires assistance in washing her back and transferring into the shower. The testimony contradicts the information reported during the February medical assessment, and based on Nurse Porter's observations of the Appellant's ability to fully extend her arms above her head, touch her posterior hips and feet, Ms. [REDACTED] assistance in washing the Appellant's back appears more a courtesy than a need. The Appellant was correctly assessed as a Level 1 in bathing.

The Appellant experiences bowel incontinence less than three times per week, and was therefore correctly assessed as a Level 2 in this area, occasional incontinence, which does not constitute a deficit.

The Appellant was assessed as Level 2, supervised/assistive device, in the areas of transferring and walking. Ms. [REDACTED] reported that she occasionally provides physical assistance to the Appellant with transferring and walking. However, based on Nurse Porter's observations of the Appellant's ability to transfer and walk without difficulty during the assessment, Ms. [REDACTED] occasional assistance provided to the Appellant does not establish deficits in these areas.

The Appellant was assessed as requiring prompting/supervision with medication administration. Based on the testimony provided, the Appellant has the ability to self-administer her medications, including injections, once her medications are prepared for her. The Appellant was correctly assessed in this area.

Whereas the Appellant was found to be demonstrating only one deficit during the February 2019 medical assessment, the Appellant does not meet the medical criteria to receive Personal Care Services.

CONCLUSIONS OF LAW

- 1) To be found medically eligible for services under the Personal Care Program, an individual must have a minimum of three (3) deficits obtained from the PAS assessment.
- 2) The Appellant received a deficit in the area of dressing from the February 2019 PAS.
- 3) No additional deficits were found based on the documentation and testimony provided.
- 4) With only one (1) deficit, the Appellant does not meet the medical criteria to receive Personal Care Services.

DECISION

It is the decision of the State Hearing Officer to uphold the decision of the Respondent to deny the Appellant's application for Personal Care Services.

ENTERED this 1st day of May 2019.

**Kristi Logan
State Hearing Officer**