



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
Berkeley County DHHR
P.O. Box 1247
433 MidAtlantic Parkway
Martinsburg, West Virginia 25402**

**Jolynn Marra
Interim Inspector General**

June 27, 2019



RE: [REDACTED] v. WV DHHR
ACTION NO.: 19-BOR-1638

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services

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

[REDACTED],

Appellant,

v.

Action Number: 19-BOR-1638

**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 [REDACTED]. 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 26, 2019, on an appeal filed May 2, 2019.

The matter before the Hearing Officer arises from the April 10, 2019 decision by the Respondent to close the Appellant's Personal Care Services (PCS) due to a finding of medical ineligibility.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services (BoSS). Appearing as a witness for the Department was [REDACTED], RN with KEPRO. In attendance, but not participating, was [REDACTED], RN Supervisor with KEPRO. The Appellant appeared *pro se*. All witnesses were sworn, and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Bureau of Medical Services (BMS) Provider Manual, Chapter 517 Personal Care Services, §§ 517.13.5 – 517.13.7
- D-2 Notice of Decision: Termination, dated April 10, 2019
- D-3 Medical Necessity Evaluation Request (PC-MNER) form, dated March 7, 2019
- D-4 Personal Care Pre-Admission Screening (PAS); Summary form; Medication list, dated April 9, 2019
- D-5 Personal Care Pre-Admission Screening (PAS) Summary, dated April 9, 2019 submitted by [REDACTED]
- D-6 Personal Care Pre-Admission Screening (PAS) Summary, dated April 25, 2017 submitted by [REDACTED]

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Personal Care Services (PCS).
- 2) [REDACTED], RN with KEPRO, conducted an annual re-assessment of the Appellant's medical eligibility for PCS on April 9, 2019. Her findings were recorded on the Pre-Admission Screening (PAS) form. (Exhibit D-4)
- 3) On the PAS assessment, the Appellant was found to be incontinent with bladder which equates to a Level 3. A functional deficit in the area of *continence* was awarded. No other functional deficits were found during the April 2019 PAS assessment. (Exhibit D-4)
- 4) The Respondent issued a Notice of Decision on April 10, 2019 to the Appellant advising her that she has been determined medically ineligible for PCS program benefits resulting in termination of her personal care services. The notice of decision explained that the PAS indicated deficiencies in one (1) area - continence. Because she had less than three (3) deficits, she was not medically eligible for the Personal Care Program. (Exhibit D-2)
- 5) The Appellant proposed deficits in the areas of *eating, bathing, and administering medication*.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §517.13.5 Medical Criteria, 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. The UMC RN will use Center for Disease Control (CDC) guidelines for age appropriate developmental milestones as criteria when determining functional levels and abilities for children.

Section	Observed Level	
#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	
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.)

An individual may also qualify for PC services if he/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:

Section	Observed Level
#24	Decubitus; Stage 3 or 4
#25	In the event of an emergency, the individual is Mentally unable or Physically unable to vacate a building. Independently or 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

Medical eligibility for PCS program benefits requires an individual to have at least three (3) deficits as derived from the PAS assessment. The Appellant underwent an annual PAS assessment in April 9, 2019. RN [REDACTED] conducted the PAS assessment who found the Appellant to only have a deficit in one (1) area – continence. On April 10, 2019, the Respondent sent a notice of decision terminating the Appellant’s PCS program benefits for not meeting medical eligibility. The Appellant proposed additional deficits in the areas of eating, bathing, and administering medication.

The Appellant was assessed as a Level 1, self/prompting, in the functional area of eating. During the PAS assessment with RN [REDACTED] the Appellant reported she was able to cut her food, feed herself with normal utensils and did not require adaptive equipment to aide in the task of eating. However, at the hearing, the Appellant testified she cannot prepare food because her right hand goes “numb” and she drops things. In order to receive a deficit in the functional area of eating, a Level 2 or higher must be assessed. Policy explains that assistance must be required for an individual to get nourishment, not assistance with meal preparation. The Appellant did not establish an additional deficit in the area of eating.

The Appellant was assessed as a Level 1, self/prompting in the functional area of bathing. Policy requires a Level 2 or higher, (physical assistance or more) to receive a deficit in this functional area. During the PAS assessment, the Appellant denied the need for assistance in transferring in/out of the shower or with bathing. At the hearing, the Appellant testified that can bathe herself (except for her back), but often needs to call her daughter for assistance with getting out of the shower. The Appellant’s testimony regarding assistance with transferring out of the shower on

occasion was unconvincing. At the PAS assessment, the Appellant was observed to be able to fully extend her arms above her head, touch the top of her head, her posterior hips and shoulders. Additionally, RN [REDACTED] testified that during the PAS assessment, the Appellant ambulated outside and down the street without difficulty and without physical assistance or the use of an assistance device. The Appellant was also observed transferring from her bed, walking to the door of her apartment and back to her bed without difficulty. Additionally, the testimony revealed that the Appellant's direct care worker assisted the Appellant with housework, and not personal care. The Appellant did not establish an additional deficit in the area of bathing.

Regarding medication assistance, the Appellant testified that she has difficulty opening her medication and, therefore, requires assistance. However, the Appellant testified that she does not need assistance with medications that have non-child safety caps (easy open lids). RN [REDACTED] noted during the PAS assessment the Appellant's medications are supplied in bottles with easy open lids from the pharmacy. Otherwise, the Appellant is able to administer her own medications and use her inhalers. No deficit was established for administering medication.

Of note, the Appellant does have an order for continuous oxygen, however, she stated she monitors it herself and turns it off when her oxygen levels are within normal limits. Policy allows a deficit for skilled needs in the areas of suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings or irrigations. Continuous oxygen use is not considered a deficit per policy.

The Appellant testified that she did not answer the PAS questions honestly because she was too embarrassed to reveal to RN [REDACTED] she needed assistance. She stated that it was embarrassing to let people know she needed help with bathing and with food. Apparently, on the Appellant's original PAS done in April 2017 by a male nurse, [REDACTED], she was able to discuss her need for help as she received a total of seven (7) deficits: bathing, dressing, grooming, vacating a building, continuous oxygen and administering medication. (See Exhibit D-6) The Appellant unconvincingly explained that she did not answer the questions honestly during her current assessment because she thought she should be getting better and was too embarrassed to admit she was not. Of note, the Appellant was able to discuss her urinary incontinence occurring more than three (3) times a week with RN [REDACTED] at the PAS assessment, thereby receiving a deficit for incontinence.

Whereas only one (1) deficit was found as a result of the testimony and documentation provided, the Appellant no longer meets the medical criteria to continue receiving 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 continence from the April 2019 PAS.
- 3) No other deficits were established.

- 4) With only one (1) deficit found, the Appellant no longer meets the medical criteria to continue receiving Personal Care services.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's services under the Personal Care Program.

ENTERED this 27th day of June 2019.

Lori Woodward, State Hearing Officer