



**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  
304-368-4420 ext. 79326**

**Jolynn Marra**  
Interim Inspector  
General

August 5, 2019



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-1752

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: Tamra Grueser, Bureau of Senior Services

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

██████████,

**Appellant,**

v.

**ACTION NO.: 19-BOR-1752**

**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 July 2, 2019, on an appeal filed May 29, 2019.

The matter before the Hearing Officer arises from the March 15, 2019 determination by the Respondent to deny medical eligibility for the Medicaid Personal Care Program (PCP) resulting in termination of the Appellant's Personal Care Services (PCS).

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as witness on behalf of the Respondent was Cristy Bock, RN, KEPRO. The Appellant appeared *pro se* and was represented by ██████████, RN, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Notice, dated March 15, 2019
- D-2 Personal Care Pre-Admission Screening (PAS), dated March 14, 2019
- D-3 Personal Care PAS, dated March 22, 2018
- D-4 Personal Care Services Program Member Assessment, dated October 23, 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 has been a PCP participant since 2015 and receives PCS services through CCIL (Exhibits D-2 through D-4).
- 2) The Respondent's witness, Cristy Bock (Nurse Bock), conducted a PAS with the Appellant on March 14, 2019, to assess the Appellant's continued medical eligibility for PCP (Exhibits D-1 and D-2).
- 3) On March 15, 2019, the Respondent issued a notice advising the Appellant that he was determined medically ineligible for PCP and that his PCS would be terminated due to the Appellant lacking deficits in three critical areas as required for PCP eligibility (Exhibit D-2).
- 4) The Appellant received deficits in *bathing* and *grooming* (Exhibits D-1 and D-2).
- 5) The Appellant's representative testified that the Appellant should have been awarded deficits in *dressing*, *continence*, *vacating* and *transfer*.
- 6) The Appellant's witness was not present during the completion of the PAS. CCIL staff present during completion of the PAS no longer provide care for the Appellant (Exhibit D-2).
- 7) The Appellant was mentally and physically able to vacate the building in the event of an emergency but required supervision (Exhibit D-2).
- 8) The PAS reflected that the Appellant was Level 1 and did not require physical assistance in the functioning area of *dressing* (Exhibit D-2).
- 9) The Appellant required physical assistance with dressing (Exhibit D-2).
- 10) At the time of the PAS, the Appellant was unable to bend at the waist and touch his feet (Exhibit D-2).
- 11) The PAS reflected that the Appellant was continent of the bowel and bladder and assessed as a Level 1 (Exhibit D-2).
- 12) At the time of the PAS, the Appellant required physical assistance to perform perineal care (Exhibit D-2).

- 13) The PAS reflected that the Appellant required supervision when transferring and was assessed as a Level 2 (Exhibit D-2).
- 14) At the time of the PAS, the Appellant required physical assistance when transferring (Exhibit D-2).

### **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. To obtain a deficit in the functioning area of *dressing*, the individual must be Level 2 or higher and require physical assistance or more. To obtain a deficit in the functioning area of *continence-bowel/bladder*, the individual must be Level 3 incontinent. To obtain a deficit in the functioning area of *transfer*, the individual must be Level 3 or higher and require one-person or two-person assistance.

##### **#26. Functioning abilities of an individual in the home ...**

- c. Dressing- Level 2 or higher (physical assistance or more)
- e.,f. Continence Level 3 or higher (must be incontinent)
- h. Transferring- Level 3 or higher (one-person or two person assistance in the home)

An individual may also qualify for PC services if he has two functioning deficits identified in #26 a.-i., and any one or more of the following conditions indicated on the PAS:

#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 dressing, or (m) irrigations

#28- Individual is not capable of administering is own medications

## **DISCUSSION**

The Appellant completed an annual PAS to determine his continued medical eligibility for PCP. The Respondent determined that the Appellant was no longer medically eligible for PCP due to lacking three functioning deficits as required for eligibility. The Appellant received deficits in the areas of *grooming* and *bathing*.

The Appellant's representative testified that the Appellant's functioning has declined since the 2019 PAS completion. The Appellant argued additional deficits that existed at the time of the PAS include *vacating*, *dressing*, *bowel*, and *transferring*. This Hearing Officer must discern whether the Respondent correctly determined the Appellant's PCP eligibility based on functioning deficits present at the time the PAS was completed. Therefore, the Board of Review is unable to consider deficit functioning changes since the time of the PAS. Although the Appellant's representative testified that she was not providing care for the Appellant at the time of the assessment, her testimony regarding her knowledge of the Appellant's treatment and assessment record was found by this Hearing Officer to be credible. The Appellant's representative testified that previous CCIL staff present during the 2019 assessment are no longer providing care for the Appellant and were unavailable to provide testimony.

The Respondent had to prove by a preponderance of evidence that the Appellant should not have been awarded additional deficits in the functioning areas of *vacating*, *dressing*, *continence*, or *transferring*.

### **Vacating**

To obtain a deficit for the functioning area of *vacating*, policy requires that the individual be mentally or physically unable to vacate the building in the event of an emergency. During the PAS, the Appellant reported that he could vacate the building with supervision. No evidence was entered to demonstrate that the Appellant was mentally or physically unable to vacate the building in the event of an emergency. The evidence did not establish that the Appellant should have been awarded a deficit in the area of *vacating*.

### **Dressing**

To obtain a deficit for the functioning area of *dressing*, policy requires that the individual be Level 2 and require physical assistance dressing. The PAS reflected that the Appellant was Level 1 and did not require physical assistance in the functioning area of *dressing*, therefore, the Respondent did not award the Appellant a deficit in the area of *dressing*. The 2019 PAS referenced dressing tasks such as snapping, buttoning, zipping, socks, and shoes; however, the PAS entered into

evidence is cut-off and it cannot be clearly discerned if Nurse Bock was referencing the Appellant's ability to complete dressing tasks independently or if he required physical assistance. Nurse Bock testified that the Appellant reported to her that he was capable of independently completing dressing tasks. The Appellant's witness testified that at the time of the PAS, the Appellant was able to do his own fasteners but needed physical assistance to dress his lower body. Although it's possible that the Appellant reported to Nurse Bock that he was able to dress independently, the PAS reflected that the Appellant was unable to bend at the waist and touch his feet. The Appellant argued that at the time of the PAS, he required physical assistance to dress the lower half of his body. Pursuant to PAS documentation of the Appellant's inability to bend and touch his feet, the Appellant's argument of inability to independently dress the lower half of his body is plausible. The preponderance of evidence established that the Appellant required physical assistance to complete activities of dressing and a deficit should have been awarded in the functioning area of *dressing*.

#### Continence:

To obtain a deficit for the functioning area of *continence-bowel* or *continence-bladder*, policy requires that the individual be Level 3, incontinent. The PAS reflected that the Appellant was Level 1 and was continent of bowel and bladder, therefore, the Respondent did not award the Appellant a deficit in the area of *continence*. The 2019 PAS referenced "eal [sic] care following bowel movements;" however, the PAS entered into evidence is cut-off and it cannot be clearly discerned if Nurse Bock was referencing the Appellant's ability to complete perineal care independently or if he required physical assistance. Nurse Bock testified that Level 3 incontinence could be established if the Appellant was unable to perform perineal care but argued that the Appellant was not awarded a deficit in *continence* due to his report during the PAS that he was able to independently perform perineal care. The Appellant contended that the medical barriers causing him to be unable to bend at the waist affect his ability to perform perineal care and that he required assistance with perineal care at the time of the PAS. As the evidence established that the Appellant is unable to bend at the waste and touch his feet and the PAS entered does not corroborate Nurse Bock's testimony of the Appellant's report of independent perineal care during the PAS, this Hearing Officer cannot rule out the Appellant's argument that his inability to bend affects his ability to independently perform perineal care. Due to the missing PAS narrative and lack of evidence to rule out the Appellant's argument, the Respondent failed to prove by a preponderance of evidence that the Appellant was correctly denied a deficit in the functioning area of *continence*.

#### Transferring:

To obtain a deficit for the functioning area of *transferring*, policy requires that the individual be Level 3 and require physical assistance or more. The PAS narrative reflected that the Appellant reported to Nurse Bock that he could independently transfer without hands on assistance but, again, the narrative is cut off and does not clearly identify whether the Appellant was actually able to independently transfer. The Appellant's representative argued that at the time of the PAS, the Appellant required physical assistance transferring. Nurse Bock's narrative on the PAS reflects that she observed the Appellant transferring and did not observe the Appellant walking. During the hearing, Nurse Bock provided testimony that conflicted with her narrative on the PAS. During the hearing, Nurse Bock testified that she did not observe the Appellant transferring and stated that the Appellant required "major help to get into bed." Nurse Bock testified that she recalled the Appellant telling her that he has difficulty transferring when no one is there and that when someone

is there, he has them help keep him steady because he has balance issues. Nurse Bock's recollection of the Appellant reporting barriers transferring is not addressed in the PAS. No explanation was given for why the PAS reflected that transferring was observed when Nurse Bock testified that she had not observed him transferring. Based on Nurse Bock's own admission that the Appellant required assistance to steady him and her testimony inconsistent with the PAS, the Respondent failed to demonstrate by a preponderance of evidence that the Appellant did not require Level 3 physical assistance during *transferring*.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for the Medicaid Personal Care Program (PCP), the applicant must demonstrate deficits in at least three (3) functioning areas as outlined on the Pre-Admission Screening (PAS) assessment.
- 2) The Respondent awarded the Appellant deficits in the areas of *bathing* and *grooming*.
- 3) The evidence demonstrated that the Appellant should have received additional deficits in the areas of *dressing*, *continence*, and *transfer*.
- 4) The Respondent incorrectly denied the Appellant medical eligibility for PCP.

### **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 Program.

ENTERED this 6<sup>th</sup> day of August 2019.

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**Tara B. Thompson**  
State Hearing Officer