



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

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Cabinet Secretary**

**Board of Review  
State Capitol Complex  
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**Jolynn Marra  
Interim Inspector General**

September 18, 2019



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 19-BOR-1931

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra Grueser, Department Representative

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

██████████,

**Appellant,**

**v.**

**Action Number: 19-BOR-1931**

**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 July 31, 2019, on an appeal filed June 21, 2019.

The matter before the Hearing Officer arises from the May 30, 2019 decision by the Respondent to deny the Appellant's application for Personal Care Services (PCS) based on unmet medical eligibility.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as a witness for the Department was Erika Blake. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- |     |   |
|-----|---|
| D-1 | BMS Provider Manual (excerpt)<br>Chapter 517 Personal Care Services<br>§§ 517.13.5 – 517.13.7 |
| D-2 | Notice of Decision: Denial<br>Notice date: May 30, 2019                                       |

- D-3 Medical Necessity Evaluation Request (MNER)  
MNER form, fax cover sheet  
Date received: May 6, 2019
- D-4 Personal Care Pre-Admission Screening (PAS)  
Assessment Date: May 30, 2019
- D-5 Personal Care Pre-Admission Screening (PAS) Summary Sheet  
Assessment Date: May 30, 2019
- D-6 Medication list for the Appellant, dated May 3, 2019

**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 applied for Personal Care Services (PCS).
- 2) An assessment of the Appellant's medical necessity for PCS was conducted on May 30, 2019. (Exhibit D-4)
- 3) By notice dated May 30, 2019, the Respondent advised the Appellant that she was determined medically ineligible for PCS, resulting in the denial of her PCS application. (Exhibit D-2)
- 4) This notice (Exhibit D-2) provided the specific basis for denial as "Your Pre-Admission Screening Form (PAS) indicates deficiencies in 0 areas. Because you have less than three (3) deficits, you are not medically eligible for the Personal Care Program."
- 5) The Appellant proposed additional deficits in the areas of *bathing, dressing, grooming, walking, and vacating a building in the event of an emergency.*
- 6) The Appellant is independent in the area of *bathing.*
- 7) The Appellant is independent in the area of *dressing.*
- 8) The Appellant is independent in the area of *grooming.*
- 9) The Appellant is independent in the area of *walking.*

- 10) The Appellant is capable of *vacating* a building in the event of an emergency independently.

### **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,	Level 3 or higher (must be incontinent)
f.	Bowel 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**

The Appellant has appealed the Respondent's decision to deny her application for Personal Care Services based on insufficient deficits to establish medical eligibility. The Respondent must

show by preponderance of the evidence that the Appellant did not have the three deficits required to establish medical eligibility for Personal Care Services.

Medical eligibility for PCS is assessed by a nurse whose findings are recorded on a PAS. The Respondent's nurse found the Appellant had no deficits (Exhibits D-4 and D-5), resulting in the Respondent's determination of medical ineligibility (Exhibit D-2). Testimony and evidence supported the nurse's findings and resulted in no additional deficits.

The Appellant was assessed as independent in the area of *bathing*. The assessing nurse noted on the PAS (Exhibit D-4) that the Appellant reported the "ability to transfer in and out of shower/tub" and denied "the need to have assistance with bathing." The Appellant testified she was independent with regard to *bathing*. The Appellant was correctly assessed as independent – or Level 1 – in this area, which does not result in a deficit.

The Appellant was assessed as independent in the area of *dressing*. In this area, the Appellant additionally testified she was independent. The Appellant testified that she suffers from back pain and sometimes does not feel like doing things because of the pain. The Appellant was correctly assessed as independent – or Level 1 – in this area, which does not result in a deficit.

The Appellant was assessed as independent in the area of *grooming*, and the Appellant testified she is capable of grooming herself independently. The Appellant was correctly assessed as independent – or Level 1 – in this area, which does not result in a deficit.

The Appellant was assessed as independent in the area of *walking*. The assessing nurse witnessed the Appellant walk and transfer independently on the day of the assessment. The assessing nurse noted on the PAS (Exhibit D-4) that the Appellant "reported the ability to walk without hands on assistance at this time." Testimony on the Appellant's behalf indicated she was able to walk independently. The Appellant was correctly assessed as independent – or Level 1 – in this area, which does not result in a deficit.

The Appellant was assessed as capable of *vacating* a building in the event of an emergency independently. Testimony on the Appellant's behalf asserted the Appellant is physically unable to do so. This testimony is unconvincing based on the nurse's PAS notes (Exhibit D-4) that the Appellant "reports in an emergency she can vacate independently" as well as the Appellant's previously noted independence in the area of *walking* and the assessing nurse's observations of the Appellant walking and transferring during the assessment. The Appellant was correctly assessed as independent in this area, which does not result in a deficit.

With no additional deficits revealed through evidence and testimony, the Appellant did not establish medical eligibility for PCS. The Respondent was correct to deny the Appellant's application for the PCS program on this basis.

### **CONCLUSION OF LAW**

Because the Appellant does not have a minimum of three deficits as defined by PCS policy, she did not establish medical eligibility and the Respondent must deny her application for the PCS program.

### **DECISION**

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

**ENTERED this \_\_\_\_ Day of September 2019.**

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**Todd Thornton**  
**State Hearing Officer**