



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
304-746-2360
Fax – 304-558-0851**

**Jolynn Marra
Interim Inspector General**

October 2, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:19-BOR-2276

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 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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
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 Number: 19-BOR-2276

**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 October 1, 2019, on an appeal filed August 28, 2019.

The matter before the Hearing Officer arises from the August 1, 2019 decision by the Respondent to deny the Appellant's application for Personal Care Services Program (PCS) benefits based on unmet medical eligibility.

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

Department's Exhibits:

- D-1 Bureau of Medical Services Provider Manual §§ 517.13.5 through 517.13.80
- D-2 KEPRO Pre-Admission Screening (PAS) Assessment, dated August 1, 2019
- D-3 KEPRO PAS Summary, dated August 1, 2019
- D-4 Medical Necessity Evaluation Request (PC-MNER) Form, dated May 13, 2019
- D-5 Notice of Decision, dated August 1, 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 need for PCS was conducted on August 1, 2019. (Exhibit D-2)
- 3) By notice dated December 11, 2018, the Respondent advised the Appellant that PCS was denied due to unmet medical eligibility – specially, that the Appellant only established a deficiency or “deficit” in one area of care – *vacating a building* – as opposed to the minimum of three (3) set by policy. (Exhibit D-5)
- 4) The Appellant proposed deficits in the areas of *eating, bathing, dressing, and grooming*.
- 5) The Appellant's assessing nurse, Braden Scheick, recorded and summarized his findings regarding the Appellant's functional abilities in the home in the Pre-Admission Screening (PAS) documents and summary form. (Exhibits D-2 and D-3)
- 6) The Appellant is independent – or “Level 1” as designated by program policy – in the areas of *eating, bathing, dressing, and grooming*. (Exhibits D-2 and D-5)

APPLICABLE POLICY

West Virginia Bureau for Medical Services (BMS) Personal Care Services Manual § 517.13.1 Medical Eligibility Determination provides in part:

The Utilization Management Contractor (UMC) is entity responsible to conduct the medical necessity assessment to confirm a person's eligibility for PCS. The UMC will use the PAS tool to certify an individual's medical eligibility for PC services and determine the level of service required. To be medically eligible, a member must demonstrate three (3) deficits, based on the presence and level of severity of functional deficits, possibly accompanied by certain medical conditions.

BMS Manual § 517.13.5 Medical Criteria provides in part:

An individual must have three (3) deficits as described on the PAS form to qualify medically for the Personal Care Program (PCP).

#26 Functional abilities of individuals 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 – Level 3 or higher (must be incontinent)
- 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 PCS if he/she has two (2) functional deficits identified as listed above (items refer to PAS) 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 dressings, or (m) irrigations.

#28 Individual is not capable of administering his/her own medications.

BMS Manual § 517.13.8 Results of PAS Evaluation - Denial provides in part:

If the UMC determined the applicant does not meet medical eligibility criteria for PCS, the UMC will provide the applicant with a denial letter within five (5) business days of the decision date. The letter will include why he/she does not meet medical eligibility, a copy of the PAS Summary, the applicable Personal Care policy manual section(s), notice of free legal services, and a Request for hearing Form to be completed if the applicant wishes to contest the decision, and specific timeframes for filing an appeal.

DISCUSSION

The Appellant submitted an application for PCS. On August 1, 2019, KEPRO, the UMC for BMS, conducted a PAS and issued a notice on August 1, 2019, advising the Appellant that he was ineligible to receive PCS due to unmet medical eligibility. The Appellant was awarded one (1) deficit in the functional area of *vacating a building*. The Appellant's witness argued the Appellant should have been awarded deficits in the functional areas of *eating*, *bathing*, *dressing*, and

grooming. The Respondent must show by preponderance of evidence that the Appellant did not have the three (3) deficits required to establish medical eligibility for PCS.

Eating

To be awarded a deficit in the functional area of *eating*, the Appellant had to be assessed on the PAS as Level 2, the individual requires physical assistance to get nourishment, but does not include food preparation. The Appellant's PAS comments noted that the Appellant reports the ability to eat his food and feed himself with normal utensils. The Appellant denied the use of adaptive equipment to aid in the task of eating. The Appellant's mother testified that the Appellant requires assistance with meal preparation. The Respondent testified that policy does not allow a deficit to be given for meal preparation.

Bathing and Dressing

To be awarded a deficit in the functional areas of *bathing* and *dressing*, the Appellant had to be assessed on the PAS as Level 2, the individual requires physical assistance or more. The nurse's PAS comments noted, "Applicant reports taking a shower. Applicant reports the ability to transfer in and out of shower/tub without assistance. Applicant denied the need to have assistance with bathing." The PAS comments noted the nurse conducted a physical examination of the Appellant in which the Appellant demonstrated his ability to touch his head, face, shoulders, posterior hips, and his feet with his hands while bending at the waist. The Appellant's mother testified that he requires assistance with bathing because she gives him direction and prompting with his hygiene. The Respondent testified that no deficit is established for requiring assistance due to prompting.

The Appellant's mother argued that the Appellant should have been awarded a deficit for *dressing* because the Appellant has a difficult time with remembering how to get dressed and that she sometimes prompts him in doing so. The August 2019 PAS noted that the Appellant denied the need for any hands-on assistance with any part of dressing his upper and/or lower body.

On the August 2019 PAS, the Appellant was assessed as a Level 1, completed tasks of *bathing* and *dressing* without assistance or with prompting. Policy requires a minimum of physical assistance, not prompting, to demonstrate a deficit in these functional areas. The evidence demonstrated that the Appellant was physically able to bathe and dress himself and did not require physical assistance to complete *bathing* or *dressing*.

Grooming

The Appellant's mother testified that the Appellant requires assistance with prompting to take care of his grooming needs. However, in the *grooming* section of the 2019 PAS, it was noted that he could accomplish all grooming tasks, without assistance, including nails, shaving, and applying deodorant. The Respondent testified that the Appellant was not given a deficit for *grooming* because policy requires a minimum of physical assistance, again not prompting.

Vacating a Building

The nurse who conducted the August 2019 PAS testified the Appellant has a diagnosis of Autism and Developmental Delay and that in the event of an emergency he would not be able to vacate a building due to his mental capacity. The Respondent testified the Appellant was given a deficit for *vacating a building*.

The Appellant's mother testified that he needs assistance with cooking his meals and his basis household chores. The Respondent testified that assistance with cooking and household chores are not deficits. Policy does not allow deficits for needing assistance with cooking meals or household chores.

With no additional deficits revealed through evidence, the Appellant does not meet the medical criteria to receive Personal Care Services. The Appellant is independent in all functional areas with the exception of *vacating a building*. The Respondent was correct to deny the Appellant's participation in the PCS program.

CONCLUSIONS OF LAW

- 1) To be eligible for PCS, the applicant must demonstrate deficits in at least three (3) functional areas outlined on the PAS.
- 2) At the time of the August 2019 PAS, the Appellant demonstrated one (1) deficit in the functional area of *vacating a building*.
- 3) No other deficits were established.
- 4) With only one (1) deficit found, 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 Respondent's decision to deny the Appellant's application for Personal Care Services.

ENTERED this _____ day of October 2019.

Danielle C. Jarrett
State Hearing Officer