



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241**

**Jolynn Marra**  
Interim Inspector General

October 9, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-2346

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 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,

Pamela L. Hinzman  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Tammy Grueser, BoSS

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

████████████████████,

**Appellant,**

**v.**

**ACTION NO.: 19-BOR-2346**

**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 8, 2019, on an appeal filed September 6, 2019.

The matter before the Hearing Officer arises from the August 5, 2019 decision by the Respondent to deny the Appellant's application for Personal Care Program services.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Irene Carpenter, RN/Clinical Assessor, KEPRO. Appearing as a witness for the Appellant was ██████████, the Appellant's daughter. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Provider Manual Section 517.13.5
- D-2 Pre-Admission Screening (PAS) dated August 1, 2019
- D-3 PAS Summary submitted on August 2, 2019
- D-4 Medical Necessity Evaluation Request signed on July 9, 2019
- D-5 Notice of Decision dated August 5, 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 following Findings of Fact are set forth.

## **FINDINGS OF FACT**

- 1) The Appellant applied for Personal Care Services and was subject to a medical assessment to determine medical eligibility for the program.
- 2) On August 1, 2019, KEPRO completed a Pre-Admission Screening (PAS) and determined that the Appellant was not medically eligible for Personal Care Services.
- 3) The Appellant was awarded one (1) deficit on the August 1, 2019 PAS (D-2 and D-3) in the area of physical assistance with bathing.
- 4) An individual must exhibit deficiencies in at least three (3) functional areas to be determined medically eligible for Personal Care Services.
- 5) The Appellant was notified of the denial of Personal Care Services in a Notice of Decision dated August 5, 2019 (D-5).
- 6) The Respondent conceded two (2) additional deficits to the Appellant in the functional areas of one-person physical assistance with dressing and inability to vacate the building in the event of an emergency during the hearing.

## **APPLICABLE POLICY**

Bureau for Medical Services (BMS) Provider Manual Section 517.13.1 Medical Eligibility Determination states:

The Utilization Management Contractor (UMC) is the entity responsible to conduct the medical necessity assessment to confirm a person's eligibility for Personal Care services. The UMC will use the Pre-Admission Screening (PAS) tool to certify an individual's medical eligibility for services and determine the level of services required.

BMS Provider Manual Section 517.13.5 (D-1) lists medical criteria for the Personal Care Program. It states that an individual must have three (3) 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.

### Section #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. f.	Continence, Bowel 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 Personal Care services 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:

#### Section

#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**

Policy states that an individual must receive three (3) deficits as described on the PAS to qualify medically for Personal Care Services. These deficits are derived from a combination of assessment elements on the PAS.

The Appellant received a deficit in one (1) functional area during her August 2019 PAS. Based on testimony provided during the hearing, the Respondent conceded two (2) additional deficits to the Appellant.

The two (2) deficits conceded by the Respondent brings the Appellant's total number of functional deficits to three (3).

### **CONCLUSIONS OF LAW**

- 1) To be eligible for Personal Care Services, an individual must receive three (3) functional deficits on the PAS form.
- 2) The Appellant received one (1) deficit on her August 2019 PAS.
- 3) Two (2) additional deficits – one-person physical assistance with dressing and inability to vacate the building in the event of an emergency – were conceded by the Respondent during the hearing.
- 4) As the addition of two (2) deficits brings the Appellant's total number of functional deficits to three (3), she has been determined medically eligible for Personal Care Services.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's August 5, 2019 action to deny the Appellant's application for Personal Care Services.

**ENTERED this 9th of October 2019.**

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Pamela L. Hinzman  
State Hearing Officer