



**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**

January 17, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2820

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**

██████████,

Appellant,

v.

Action Number: 18-BOR-2820

**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 January 15, 2019, on an appeal filed November 28, 2018.

The matter before the Hearing Officer arises from the November 12, 2018 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 were Marindy Weaver and Levere Wilson, RNs with KEPRO. In attendance, but not participating, was Melody Cottrell, 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 Personal Care Pre-Admission Screening (PAS); Summary form; Medication list, dated November 9, 2018
- D-3 Medical Necessity Evaluation Request (PC-MNER) form, dated September 14, 2018
- D-4 Notice of Decision: Termination, dated November 12, 2018
- D-5 Personal Care Services Program Member Assessment, dated June 21, 2018
- D-6 Personal Care Services Program Plan of Care, dated June 21, 2018
- D-7 Personal Care Pre-Admission Screening (PAS) Summary, dated December 7, 2017

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) RN Marindy Weaver and RN Levere Wilson, both with KEPRO, conducted an annual re-assessment of the Appellant's medical eligibility for PCS on November 9, 2018. Their findings were recorded on the Pre-Admission Screening (PAS) form. (Exhibit D-2)
- 3) On the PAS assessment, the Appellant was found to require physical assistance with getting in and out of the shower and with cleaning his feet and lower extremities due to shortness of breath. He was assessed at a Level 2 – Physical Assistance. A functional deficit in the area of *bathing* was awarded. (Exhibit D-2)
- 4) On the PAS assessment, the Appellant was found to require physical assistance in dressing his lower body due to pain, fatigue and shortness of breath. He was assessed at a Level 2 – Physical Assistance. A functional deficit was awarded in the area of *dressing*. (Exhibit D-2)
- 5) The Appellant has a diagnosis of Chronic Obstructive Pulmonary Disease (COPD) and Osteoarthritis (OA). (Exhibits D-2 and D-3)
- 6) No other functional deficits were found on the PAS assessment.
- 7) By letter dated November 12, 2018, the Respondent advised the Appellant that his PCS program benefits would be terminated because only two functional deficits were established in the areas of *bathing* and *dressing*. The Appellant needed at least three (3) deficits to establish medical eligibility for the program. (Exhibit D-4)
- 8) The Appellant proposed deficits in the areas of *continence and walking*.
- 9) During the PAS assessment, the Appellant stated he had bowel and bladder incontinence less than three times weekly. He was assessed at a Level 2 - Occasional Incontinence for both bowel and bladder continence. (Exhibit D-2)

- 10) The Appellant reported requiring the use of a cane for ambulation on his “bad days” but can walk without assistance otherwise. He was assessed at a Level 2 – Supervised/Assistive Device. (Exhibit D-2)

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §517.13.5 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.

<u>Section</u>	<u>Observed Level</u>
#26	Functional abilities observed in the home
a) Eating	Level 2 or higher (physical assistance or more)
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 or comatose)
h) Transferring	Level 3 or higher (one-person or two-person assistance in the home)
i) Walking	Level 3 or higher (one-person or two-person assistance in the home)
j) Wheeling	Level 3 or higher (must be Level 3 or Level 4 on walking to use Level 3 or 4 for wheeling. Do not count outside of the home.)

An individual may also qualify for Personal Care services if he or 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:

<u>Section</u>	<u>Observed Level</u>
#24	Decubitus, Stage 3 or 4
#25	In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) Independently and b) 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 November 2018. RN Weaver and RN Wilson were the nurses assigned to evaluate the Appellant. The nurses assessed the Appellant to have deficits in the areas of bathing and dressing. On November 12, 2018, the Respondent sent notice of termination of the Appellant's PCS program benefits for not meeting medical eligibility. The Appellant proposed additional deficits in the areas of continence and walking.

The Appellant testified that he was embarrassed to discuss his incontinence with the female nurses. He testified that in actuality he has issues with continence "quite a bit" because he cannot make it to the bathroom in time. RN Weaver testified that the Appellant seemed uncomfortable in discussing his incontinence issues and hesitated before answering questions. Although the Appellant's testimony was credible, there was no evidence to show how often he has incontinence issues other than "quite a bit". No additional deficit can be awarded in the area of continence.

The Appellant testified that he does use a cane to ambulate, however, he often tries not to walk with a cane. During the PAS evaluation, RN Weaver observed the Appellant ambulating without the use of any assistive device. In order to receive a deficit in the area of ambulation a finding of at least a Level 3 – one-person assistance is required. No additional deficit can be awarded in the area of ambulation.

It is noted that the Appellant was assessed as needing assistance with bathing and dressing, especially with his lower extremities. During the hearing, the Appellant testified that due to his COPD, he has difficulty in accomplishing any tasks that require him to bend over. However, in the grooming section of the 2018 PAS, it was noted that he could accomplish all grooming tasks without assistance, including nails. Although the Appellant was given an opportunity to discuss any issues he may have had with toenail clipping, there was no testimony given.

Whereas only two (2) deficits were 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 deficits in the areas of bathing and dressing from the November 2018 PAS.
- 3) No other deficits were established.
- 3) With only two (2) deficits 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 17th day of January 2019.

Lori Woodward, State Hearing Officer