



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

February 5, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:18-BOR-2914

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,

Kristi Logan
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**

[REDACTED],

Appellant,

v.

Action Number: 18-BOR-2914

**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 [REDACTED]. 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 29, 2019, on an appeal filed on December 18, 2018.

The matter before the Hearing Officer arises from the December 6, 2018, decision by the Respondent to terminate the Appellant's services under the Personal Care Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. Appearing as a witness for the Respondent was Rebecca Monroe, RN with KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was his wife, [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Termination dated December 6, 2018
- D-2 Bureau for Medical Services Provider Manual §513.17.5
- D-3 Personal Care Medical Necessity Evaluation Request dated October 9, 2018
- D-4 Personal Care Pre-Admission Screening (PAS) dated December 6, 2018
- D-5 Personal Care Services Program Member Assessment dated June 6, 2018 and Plan of Care for July 2018 through December 2018

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 underwent a medical assessment to determine continued medical eligibility for Personal Care Services in December 2018.
- 2) The Pre-Admission Screening (PAS) was completed for the Appellant on December 6, 2018. The Appellant was found to have a deficit in the area of vacating a building (Exhibit D-4).
- 3) Policy requires the presence of three (3) deficits to be medically eligible for Personal Care Services (Exhibit D-2).
- 4) The Respondent notified the Appellant on December 6, 2018, that he no longer met the criteria to receive services under the Personal Care Program (Exhibit D-1).

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, Level 3 or higher (must be incontinent)
	Bowel,
f)	Bladder
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

Pursuant to policy, an individual must have at least three (3) deficits as derived from the PAS assessment to qualify for Personal Care Services. The Appellant was found to have only one (1) deficit as a result of the December 2018 medical evaluation.

The Appellant's wife, [REDACTED], and Rebecca Monroe, nurse reviewer, gave testimony regarding the Appellant's abilities regarding the areas of eating, bathing, dressing, grooming, bladder incontinence and transferring.

Eating

Ms. [REDACTED] testified that the Appellant is unable to cut his food. Ms. Monroe documented in the assessment that the Appellant reported the ability to cut his food, and denied using adaptive utensils with eating.

Bathing

Ms. [REDACTED] testified that the Appellant requires assistance with getting into and out of the shower due to back pain and swelling of his legs, and uses a shower chair. Ms. Monroe documented that the Appellant reported the ability to get into and out of the shower using grab bars, and that he is able to wash all areas of his body independently.

Grooming

Ms. [REDACTED] testified that the Appellant needs assistance in applying lotion to his legs and feet and that she cuts his toenails for him. Ms. Monroe documented that the Appellant reported that he applied lotion independently and cut his own toenails.

Dressing

Ms. [REDACTED] testified that she occasionally assists the Appellant with his socks and shoes due to his inability to lean over. Ms. Monroe documented that the Appellant reported the ability to dress himself independently, and observed the Appellant lean over and touch his feet with his hands.

Transferring

Ms. [REDACTED] testified that the Appellant requires hands-on assistance with transferring 3-4 times a week due to gout. Ms. Monroe documented that the Appellant denied needing physical assistance with transferring and that he used furniture to assist him. Ms. Monroe observed the Appellant rise from a chair using the armrest and his cane for support.

Bladder Incontinence

Ms. [REDACTED] testified that the Appellant has bladder leakage 3-4 times a week. Ms. Monroe documented that the Appellant denied any dribbling or bladder accidents in the past six months.

Ms. [REDACTED] purported that the Appellant was embarrassed to admit to Ms. Monroe the areas that he required assistance with. Ms. [REDACTED] stated that although she was present during the assessment, she did not feel as though she should interject when the Appellant was questioned by Ms. Monroe.

The nurse reviewer assessed the Appellant as a Level 1, self/prompting, in eating, bathing, dressing, grooming based on the responses provided by the Appellant and her observations made during the evaluation. The Appellant was assessed as a Level 1, continent of the bladder, and Level 2, supervised/assistive device, in transferring.

The testimony provided by the Appellant's wife contradicted the information that was provided to the assessing nurse during the December medical evaluation. Ms. [REDACTED] contention that she did not feel that she could contradict the Appellant's answers regarding his abilities in the home, and the contention that the Appellant was embarrassed to admit his need for assistance is without merit.

Whereas the Appellant was found to demonstrate only one (1) deficit as a result of his annual medical evaluation, he 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 a deficit in the area of vacating a building from the December 2018 PAS.
- 3) No additional deficits were found based on the documentation and testimony provided.
- 4) With only one (1) deficit 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 5th day of February 2019.

**Kristi Logan
State Hearing Officer**