



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

May 9, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1352

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra Grueser, Department Representative

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-1352

██████████,

Appellant,

v.

**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 April 25, 2023, on a timely appeal filed March 3, 2023.

The matter before the Hearing Officer arises from the February 28, 2023 decision by the Respondent to deny the Appellant's application for Personal Care Services (PCS) based on an unfavorable medical eligibility finding.

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

EXHIBITS

Department's Exhibits:

- | | |
|-----|---|
| D-1 | Bureau for Medical Services Provider Manual (excerpt)
Chapter 517 – Personal Care Services
§§ 517.13.5 – 517.13.8 |
| D-2 | Fax cover sheet/Medical Necessity Evaluation Request Form, dated January 9, 2023 |

D-3 Notice of decision, dated February 28, 2023

D-4 Pre-Admission Screening (PAS) form, dated February 27, 2023

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 an applicant for Personal Care Services (PCS).
- 2) Rebecca Monroe, a registered nurse for the Respondent, conducted an assessment of the Appellant on February 27, 2023 (Exhibit D-4).
- 3) Based on the findings of this assessment (Exhibit D-4), the Respondent issued a notice dated February 28, 2023, to the Appellant denying her PCS application (Exhibit D-3).
- 4) The February 28, 2023 notice (Exhibit D-3) read, in pertinent part, "KEPRO recently conducted an assessment of your medical eligibility for the Personal Care Program. You have been determined medically ineligible for Personal Care Services, which results in the denial of your Personal Care services."
- 5) The notice (Exhibit D-3) further noted that "Medical eligibility for the Personal Care Program requires deficits in at least three (3) of 13 critical areas..." and indicated the Appellant only had one (1) deficiency in the area of *continence*.
- 6) The Appellant contested the Respondent's findings in the areas of: *eating, dressing, bathing, and grooming*.
- 7) The Appellant is independent in the area of *eating*.
- 8) The Appellant is independent in the area of *dressing*.
- 9) The Appellant is independent in the area of *bathing*.
- 10) The Appellant is independent in the area of *grooming*.

APPLICABLE POLICY

The Bureau for Medical Services (BMS) 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, Bowel	Level 3 or higher (must be incontinent)
f.	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 requested a fair hearing to appeal the Respondent's decision to deny her application for the Personal Care Program based on its determination that she did not establish medical eligibility. The Respondent must show by a preponderance of the evidence that the Appellant did not establish medical eligibility for the program.

Medical eligibility for Personal Care Service (PCS) requires three deficits as set out on the PAS form, or a combination of two deficits and one or more of the conditions set by policy. The Appellant did not propose any of the related conditions but did dispute the deficit findings of the Respondent in four (4) critical care areas: *eating*, *bathing*, *dressing*, and *grooming*.

In all four (4) areas proposed by the Appellant, her testimony confirmed the assessment findings of the Respondent's assessing nurse. The Appellant testified that she is capable of performing independently in each of these critical care areas. The Appellant testified that without her medications, she does not feel motivated or inspired to address these activities of daily living. The standard applied by the Respondent is based on physical ability, and the testimony of the Appellant matches what was reported and assessed on the February 2023 PAS. Because the Appellant is physically capable of performing independently in each of these areas, she was correctly assessed as independent, or a Level 1, in each of these areas.

The Appellant testified that she has spasmodic dystonia and eats a modified diet because of this. She testified that she reported this during the PAS assessment, and the diagnosis was noted on the Medical Necessity Evaluation Request form (Exhibit D-2). An entry from the PAS (Exhibit D-3) regarding a dysphagia diagnosis reads, "Applicant reports consumption of regular consistency foods and fluids. Applicant reports chokes easily on foods and liquids." The PAS determination regarding *eating* was that the Appellant was independent, or a Level 1, and testimony from the Department representative confirmed the Appellant's diagnosis does not change the level or deficit finding in the area of *eating*. The Respondent correctly determined that the Appellant met deficit criteria in one (1) area – the area of *continence* initially established on the PAS assessment.

Without the necessary deficits or combination of deficits and conditions set by PCS policy, the Appellant has not met medical eligibility criteria for the Personal Care Program, and the Respondent correctly denied the Appellant's application on this basis.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not have three (3) deficits, or two (2) deficits in conjunction with at least one (1) of the conditions set by policy, the Appellant has not met medical eligibility for participation in the Personal Care Program.
- 2) Because the Appellant did not meet the required medical eligibility criteria, the Respondent correctly denied the Appellant's application for Personal Care Services (PCS).

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant's application for Personal Care Services (PCS) due to unmet medical eligibility.

ENTERED this ____ day of May 2023.

**Todd Thornton
State Hearing Officer**