



**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**

June 14, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1806

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Tamra Grueser, BoSS

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

[REDACTED]

**Appellant,**

v.

**Action Number: 23-BOR-1806**

**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 June 7, 2023.

The matter before the Hearing Officer arises from the May 12, 2023 decision by the Respondent to terminate benefits under the Personal Care Services Program.

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

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual, Chapter 517
- D-2 Pre-Admission Screening assessment completed on May 12, 2023
- D-3 Notice of Decision dated May 12, 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 a recipient of Personal Care Services.
- 2) The Respondent, via KEPRO, completed a Pre-Admission Screening (PAS) for the Appellant on May 12, 2023, to reevaluate the Appellant's medical eligibility for Personal Care Services (Exhibit D-2).
- 3) The Respondent determined that the Appellant was not medically eligible for Personal Care Services.
- 4) The Respondent received one (1) deficit on the PAS because she requires physical assistance with grooming (Exhibit D-2).
- 5) At least three (3) deficits in functional areas are required to establish medical eligibility for Personal Care Services (D-1).
- 6) The Respondent informed the Appellant that her Personal Care Services would be terminated in a Notice of Decision dated May 12, 2023 (Exhibit D-3).

## **APPLICABLE POLICY**

Bureau for Medical Services (BMS) Provider Manual Chapter 517.13.5, Medical Criteria (Exhibit D-1), 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,	Level 3 or higher (must be incontinent)
f.	Bowel 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 Personal Care 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**

To medically qualify for Personal Care Services, policy states that an individual must have three (3) identified functional deficits on the PAS assessment.

The Appellant received one (1) deficit on her May 12, 2023, PAS in the functional area of physical assistance with grooming.

The Appellant testified that she experiences shortness of breath and uses a breathing machine. She indicated that she has Chronic Obstructive Pulmonary Disease (COPD) and coughs at night. The Appellant experiences occasional bladder incontinence about two times per week. She indicated that she is forgetful at times, and has weakness in her arms, legs, knees and back. The Appellant testified that she has dizzy spells and that her worker comes into the bathroom when she bathes to ensure that she does not fall. She indicated that her worker washes and styles her hair.

Tamra Grueser, Registered Nurse with the Bureau of Senior Services, testified that washing and styling hair falls under the functional area of physical assistance with grooming. The Appellant received a deficit on the PAS for physical assistance with grooming.

An individual must be totally incontinent of bladder to receive a deficit in that functional area.

Based on information provided during the hearing, no additional deficits can be awarded to the Appellant. Therefore, the Appellant continues to lack the three (3) required deficits to qualify medically for the Personal Care Services Program.

### **CONCLUSIONS OF LAW**

- 1) Policy states that an individual must receive three (3) deficits on the PAS to qualify medically for the Personal Care Services Program.
- 2) The Appellant received one (1) deficit on her May 12, 2023, PAS assessment in the functional area of grooming.

- 3) Based on information provided during the hearing, no additional deficits can be awarded.
- 4) The Appellant continues to lack the three (3) deficits required to qualify medically for the Personal Care Services Program.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to terminate benefits under the Personal Care Services Program.

**ENTERED this 14th day of June 2023.**

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**Pamela L. Hinzman  
State Hearing Officer**