



**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**

**Christopher G. Nelson
Interim Inspector General**

August 2, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1812

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**

██████████,

Appellant,

v.

Action Number: 23-BOR-1812

**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 August 1, 2023.

The matter before the Hearing Officer arises from the April 25, 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*. Appearing as a witness for the Appellant was ██████████, the Appellant's mother. 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 Notice of Decision dated April 25, 2023
- D-3 Pre-Admission Screening assessment completed on April 24, 2023
- D-4 PAS Summary (submission date May 20, 2022)
- D-5 PAS Summary (submission date April 24, 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 is a recipient of Personal Care Services.
- 2) The Respondent, via KEPRO, completed a Pre-Admission Screening (PAS) for the Appellant on April 24, 2023, to reevaluate the Appellant's continued medical eligibility for Personal Care Services (Exhibit D-3).
- 3) The Respondent determined that the Appellant was not medically eligible for Personal Care Services.
- 4) The Respondent received zero (0) deficits on the PAS based on her reported functional abilities in the home (Exhibit D-3).
- 5) At least three (3) deficits in functional areas are required to establish medical eligibility for Personal Care Services (Exhibit D-1).
- 6) The Respondent informed the Appellant that her Personal Care Services would be terminated in a Notice of Decision dated April 25, 2023 (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Provider Manual Chapter 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 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 zero (0) deficits on her April 24, 2023, PAS based on her reported functional abilities.

The Appellant's mother, [REDACTED], testified that the Appellant suffers from neuropathy and uses walls, furniture, and railing as supports to steady her at times. [REDACTED] also stated that the Appellant has poor short-term memory and must be reminded to eat and take her medication at times. [REDACTED] contended that the evaluating nurse could not get a full picture of the Appellant's condition during a 30-minute evaluation. The Appellant testified that she is experiencing liver failure and was involved in an accident since the time of the April 2023 PAS. She stated that she should be reevaluated for services based on her current condition.

Tamra Grueser, Registered Nurse with the Bureau of Senior Services, testified that an individual must require physical assistance to receive a deficit in walking, and that a need for supervision is not considered a deficit in the functional area of medication administration. Ms. Grueser indicated that the Appellant could reapply for benefits at any time and a new PAS would be completed at that time.

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 zero (0) deficits in functional areas on her April 24, 2023, PAS assessment.
- 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 2nd day of August 2023.

**Pamela L. Hinzman
State Hearing Officer**