



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

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

August 9, 2023



Dear [REDACTED]:

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1995

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, BoSS

P.O. Box 1736 • Romney, WV 26757
304-822-6900 • <https://www.wvdhhr.org/oig/bor.html> •
Eric.L.Phillips@wv.gov • DHHROIGBORE@WV.GOV

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

████████████████████,

Appellant,

v.

Action Number: 23-BOR-1995

**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 3, 2023, on an appeal filed June 16, 2023.

The matter before the Hearing Officer arises from the June 9, 2023 decision by the Respondent to terminate Personal Care Services under the Aged and Disabled Waiver Program.

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

Department's Exhibits:

- D-1 Bureau of Medical Services Provider Manual § 517
- D-2 Notice of Decision dated June 9, 2023
- D-3 Pre-Admission Screening dated June 8, 2023
- D-4 Pre-Admission Screening Summary dated June 8, 2023
- D-5 Medical Necessity Request Form dated March 6, 2023
- D-6 Medications List
- D-7 Personal Care Member Assessment dated January 9, 2023
- D-8 Personal Care Member Assessment dated July 24, 2022

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 (PCS).
- 2) On June 8, 2023, a Pre-Admission Screening (PAS) (Exhibit D-3) assessment was completed with the Appellant to determine her continued eligibility for the program.
- 3) A recipient of PCS must demonstrate three deficits on the PAS to be determined medically eligible. (Exhibit D-1)
- 4) The Appellant received deficits in the areas of bathing and grooming. (Exhibit D-3)
- 5) The Respondent determined that the Appellant was not medically eligible for PCS.
- 6) On June 9, 2023, the Respondent issued a Notice of Decision to the Appellant, informing her that she so was no longer medically eligible for PCS because she lacked the required amount of deficits.
- 7) The Appellant suffers from cancer of the head and neck.
- 8) The Appellant requires a Percutaneous Endoscopic Gastrostomy (PEG) tube for eating.
- 9) The Appellant requires physical assistance with eating.

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,	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 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

Medical eligibility for Personal Care Services is determined when an individual exhibits three or more functional deficits on the PAS assessment.

As a result of a June 8, 2023 PAS assessment, the Appellant exhibited two functional deficits in requiring physical assistance with grooming and bathing. The Appellant appeals the Respondent's June 9, 2023 decision that she failed to meet the medical eligibility criteria for PCS. The Respondent must prove by a preponderance of the evidence that the Appellant failed to demonstrate functional deficits in three areas of the PAS assessment.

The Appellant suffers from advance cancers of the head and neck which contributes to her deteriorated condition. Due to her condition, the Appellant requires a PEG tube to aide in nourishment with eating. At the time of the PAS assessment, the Appellant reported an ability to consume regular consistency foods and fluids and anticipated that the PEG tube would be removed at the end of June 2023. When the Appellant's functional ability of eating was assessed, the Appellant reported that she is doing better and reported the ability to feed herself with normal utensils. (Exhibit D-3) [REDACTED], the Appellant's representative testified that her mother

is still under a physician's care to determine reoccurring cancer of the head and neck. [REDACTED] indicated that her mother's PEG tube was not removed, due a continued loss of weight. In January 2023, a Personal Care Services Program Member assessment (Exhibit D-7) was completed and notes a decreased appetite due to recent chemotherapy and that the Appellant required a special diet of Nutrum three times a day via the feeding tube in which her husband was responsible to administer.

To be awarded a deficit in eating, an individual must be assessed at a Level 2 or higher, requiring physical assistance to get nourishment. Credible testimony revealed that the Appellant suffers from cancers of the neck in which she requires a PEG tube to aide in her nourishment. At the time of the assessment, the Appellant believed that the PEG tube would be removed; however, due to her continued loss of weight the Appellant remains dependent on the PEG tube to assist in nourishment. Because the Appellant still requires the use of a PEG tube and physical assistance to obtain nourishment, a deficit *should be* awarded in the contested area of eating.

Based on the information provided at the hearing, one additional deficit can be awarded, increasing the Appellant's total number of deficits to three. Therefore, the Respondent's decision to terminate PCS cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires that an individual must receive three deficits on the PAS to qualify medically for the Personal Care Services program.
- 2) The Appellant received two deficits in the functional areas of bathing and grooming.
- 3) Based on information provided during the hearing, one additional deficit for eating can be awarded, increasing the Appellant's total number of deficits to three.
- 4) Because the Appellant has the required amount of functional deficits, she medically qualifies for the Personal Care Services program.

DECISION

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

ENTERED this _____ day of August 2023.

Eric L. Phillips
State Hearing Officer