



March 26, 2025

REMOVED

RE: **REMOVED** v. WVDHS-BMS
ACTION NO.: 25-BOR-1472

Dear **REMOVED**

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 Human Services. 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: Connie Sankoff, BoSS
REMOVED Appellant's Representative

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

REMOVED

Appellant,

v.

Action Number: 25-BOR-1472

**WEST VIRGINIA DEPARTMENT OF
HUMAN RESOURCES
BUREAU FOR FAMILY ASSISTANCE,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for **REMOVED**. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 20, 2025, on appeal filed January 21, 2025.

The matter before the Hearing Officer arises from the January 16, 2025 decision by the Respondent to terminate the Appellant's medical eligibility for the Personal Care Services program.

At the hearing, the Respondent appeared by Connie Sankoff, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Braden Scheick, RN, Acentra. The Appellant appeared pro se. Appearing as witnesses for the Appellant were **REMOVED** Service Coordinator-**REMOVED** Personal Care Nurse-Right-At-Home, and **REMOVED** **REMOVED** Caregiver. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Request for Hearing dated January 17, 2025
- D-2 Scheduling Order dated February 25, 2025
- D-3 Pre-Admission Screening dated January 14, 2025
- D-4 Pre-Admission Screening Summary dated January 14, 2025
- D-5 Pre-Admission Screening dated January 23, 2024
- D-6 Pre-Admission Screening Summary dated January 23, 2024
- D-7 Notice of Decision dated January 16, 2025
- D-8 Bureau of Medical Services Provider Manual § 517.13.5

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 (PCS).
- 2) On January 14, 2025, a Pre-Admission Screening (PAS) assessment was completed with the Appellant to determine her continued eligibility with the program.
- 3) A recipient of PCS must demonstrate three deficits on the PAS to be determined medically eligible. (Exhibit D-8)
- 4) The Appellant received a deficit in the area of grooming. (Exhibit D-3 and Exhibit D-4)
- 5) The Respondent determined that the Appellant was not medically eligible for PCS.
- 6) On January 16, 2025, the Respondent issued a Notice of Decision to the Appellant, informing her that she was no longer medically eligible for PCS because she lacked the required amount of deficits. (Exhibit D-7)
- 7) The Appellant was previously awarded five (5) deficits on her 2024 PAS assessment. (Exhibit D-6)

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

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 the January 14, 2025 PAS assessment, the Appellant demonstrated one functional deficit in the area of grooming. The Appellant appeals the Respondent's January 16, 2025 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's representatives contend that additional deficits should have been awarded in the areas of vacating during an emergency, bathing and dressing. The Appellant's representatives contend that the Appellant was the only individual present during the PAS assessment and that due to her health issues, including hearing loss and comprehension, it contributed to a lack of information being related on her behalf during the interview. The Appellant's representatives purported that the Appellant's condition has deteriorated over the years and she has not demonstrated any improvement.

Vacating During an Emergency-The Appellant's representatives contend that the Appellant could

not vacate her residence during an emergency due to her hearing issues. The Appellant's representatives testified that in the event of an emergency the Appellant would have to shelter in place at her residence. During the PAS assessment, the Appellant was rated as requiring supervision as it related to her ability to vacate her residence during an emergency. Additionally, the Appellant's previous PAS assessment rated her as requiring supervision. While the Appellant requires assistance due to her hearing difficulties, there was no evidence presented to demonstrate that the Appellant requires physical assistance to vacate her residence due to an emergency. Based on evidence presented during the hearing, the Respondent was correct in its decision to assess the Appellant as requiring supervision and a functional deficit in the contested area *cannot* be awarded.

Bathing-The Appellant representatives contend that the Appellant is physically unable to bathe herself and requires assistance from her caregiver. The Appellant's representatives provided testimony concerning the Appellant requiring assistance with brushing her teeth and combing her hair. The Appellant was awarded a functional deficit in the area of grooming due to her inability to bend over to provide nail care; therefore, the Appellant's representatives testimony regarding grooming assistance is moot. However, the Appellant's representatives provided credible testimony that she requires physical assistance with bathing. The previous PAS assessment awarded the Appellant a deficit in the contested area due to her inability to wash her feet. The Appellant was awarded a functional deficit in grooming due to her inability to provide nail care as a result of difficulties with bending over. Based on the evidence presented during the hearing, coupled with the Appellant's inability to bend over to provide care for feet, a functional deficit in the area of bathing *can be* awarded.

Dressing-The Appellant's representatives contend that the Appellant requires physical assistance in dressing; specifically, she requires assistance with putting on shoes. During the current PAS assessment, the Appellant was awarded a deficit in grooming due to her inability to bend over to provide nailcare. The Appellant representatives provided credible testimony that she requires assistance in putting on her shoes. Based on evidence presented during the hearing, coupled with the Appellant's inability to bend over to provide nail care assistance, a functional deficit in the area of dressing *can be* awarded.

Based on the information provided at the hearing, two additional deficits can be awarded in the areas of bathing and dressing 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 one functional deficit in the area of grooming.
- 3) Based on information provided during the hearing, additional deficits can be awarded in the area of bathing and dressing.

- 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 March 2025.

Eric L. Phillips
State Hearing Officer