



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 17, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1258

Dear Ms. [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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Senior Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1258

**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 March 17, 2016, on an appeal filed February 5, 2016.

The matter before the Hearing Officer arises from the January 26, 2016, decision by the Respondent to reduce the Appellant's homemaker hours under the Aged and Disabled Waiver program from a Level D to a Level C.

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

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §501.9.1
- D-2 Pre-Admission Screening and Summary dated January 24, 2016
- D-3 Pre-Admission Screening and Summary dated November 10, 2014
- D-4 Notice of Decision Re-Evaluation Assessment – Approved dated January 26, 2016
- D-5 Notice of Decision Re-Evaluation Assessment – Approved dated November 18, 2014
- D-6 Notice of Decision Re-Evaluation Assessment – Approved dated October 23, 2014

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) On January 24, 2016, the Appellant was evaluated to determine continued medical eligibility for the Aged and Disabled Waiver program and assign the appropriate level of care. APS Healthcare Nurse [REDACTED] completed a Pre-Admission Screening (PAS) (D-2) form with the Appellant to assess her functional abilities in the home.
- 2) Nurse [REDACTED] assessed the Appellant with twenty-one (21) level of care points based on the information derived from the medical evaluation.
- 3) On January 26, 2016, the Respondent issued notice (D-6) to the Appellant of its decision to reduce her homemaker hours from Level D to Level C as a result of the assessment by Nurse [REDACTED]. Twenty-six (26) points (D-1) are required for the Appellant to continue receiving services at a Level D.
- 4) The Respondent conceded that the Appellant should have received two (2) additional points in the area of wheeling on the January 2016 PAS.
- 5) The Appellant and her witnesses argued that the Appellant should have received additional points in the areas of decubitus, orientation, bathing, dressing and grooming.

APPLICABLE POLICY

Bureau for Medical Services Policy Manual §501.5.1.1(a) and 501.5.1.1(b) (D-1) set forth the Service Level criteria. There are four (4) Service Levels for Personal Assistance/Homemaker services, and points are determined based on the following sections of the PAS:

- #23 Medical Conditions/Symptoms- 1 point for each (can have total of 12 points)
- #24 Decubitus- 1 point
- #25 1 point for b, c, or d
- #26 Functional abilities:
 - Level 1 - 0 points
 - Level 2 - 1 point for each item a through i
 - Level 3 - 2 points for each item a. through m; i (walking) must be equal to or greater than Level 3 before points are given for j (wheeling)
 - Level 4 - 1 point for a, 1 point for e, 1 point for f, 2 points for g through m
- #27 Professional and Technical Care Needs - 1 point for continuous oxygen
- #28 Medication Administration - 1 point for b or c
- #34 Dementia - 1 point if Alzheimer's or other dementia

#35 Prognosis - 1 point if terminal

The total number of points allowable is 44.

LEVELS OF CARE SERVICE LIMITS

Level A - 5 points to 9 points - 0-62 hours per month

Level B - 10 points to 17 points - 63-93 hours per month

Level C - 18 points to 25 points - 94-124 hours per month

Level D - 26 points to 44 points - 125-155 hours per month

DISCUSSION

██████████ testified that the Appellant has a stage 2 decubitus ulcer on her right foot and should have received an additional point in this area. Ms. ██████████ contended that the Appellant has had ongoing issues with decubitus ulcers for several years, and that while the January 2016 PAS indicated that the ulcers on her feet had healed, the area on her right ankle had not.

Regarding orientation, Ms. ██████████ stated that the Appellant's doctor provided a statement to the Department for her previous assessment indicating that the Appellant experienced intermittent disorientation due to chronic urinary tract infections.

The Appellant purported that during her "bad days", she is unable to assist in bathing, dressing or grooming at all. The Appellant testified that she tries to help her homemaker with her bathing, dressing and grooming on her "good days". Ms. ██████████ testified that the Appellant requires total care in these areas on her "bad days".

Based on the testimony provided, the Appellant had a decubitus ulcer during the time of the January 2016 evaluation and therefore should have been awarded one (1) point in that area.

The documentation provided regarding the Appellant's intermittent disorientation was over a year old and the Appellant denied any disorientation at the time of the medical evaluation. The Appellant was correctly assessed as being oriented on the January 2016 PAS and no additional points can be awarded.

The Appellant has the ability, although limited, to participate in the areas of bathing, dressing and grooming. While the Appellant may at times require additional care in these areas, her capacity to assist in these activities demonstrates that she was correctly assessed as requiring physical assistance and no additional points can be awarded.

CONCLUSIONS OF LAW

- 1) The Appellant should have been assessed as a Level 4 – total assistance – in the area of wheeling and two (2) additional points are awarded.

- 2) The Appellant was found to have a decubitus ulcer during the time of the assessment and will be awarded one (1) additional point in this area.
- 3) Additional points were not found in the areas of orientation, bathing, dressing or grooming.
- 4) The Appellant's total level-of-care points for the January 2016 PAS is twenty-four (24), which corresponds with a Level C care.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's reduction of homemaker hours under the Aged and Disabled Waiver program from a Level D to a Level C.

ENTERED this 17th day of March 2016

**Kristi Logan
State Hearing Officer**