



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

Esta es la decision de su Audiencia Imparcial. La decision del Departamento
ha sido confirmada/invertido/remitido. Si usted tiene preguntas,
por favor llame a Phillip Owens, 304-267-0100, ext. 71054

April 27, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1468

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Tammy Grueser, RN, BoSS
[REDACTED]

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

██████████,
Appellant,

v.

Action Number: 17-BOR-1468

**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 April 26, 2017, on a timely appeal filed March 20, 2017.

The matter before the Hearing Officer arises from the December 30, 2016 proposal of the Respondent to decrease the Appellant's service level under the Aged/Disabled Waiver (ADW) Medicaid Program.

At the hearing the Respondent appeared by Tamra Grueser, RN from the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN with KEPRO. The Appellant, who was present for the hearing, was represented by her son, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Medicaid Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.9.1 – 501.9.2
- D-2 Pre-Admission Screening (PAS) form and Summary, dated December 29, 2016
- D-3 Pre-Admission Screening (PAS) form and Summary, dated February 3, 2016
- D-4 Pre-Admission Screening (PAS) form and Summary (Level of Care Review), dated November 8, 2016
- D-5 Notice of Decision, Level of Care Change, dated November 8, 2016
- D-6 Notice of Decision, dated December 30, 2016

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) On November 8, 2016, the Appellant underwent an Aged/Disabled Waiver (ADW) Program level of care review (service level review) completed Nurse [REDACTED], KEPRO reviewer. Based on information submitted by the Appellant's physician, Nurse [REDACTED] found that because the Appellant had two new medical conditions in addition to needing total assistance with eating and preparing meals, she increased the Appellant a Level C to a Level D service level. (Exhibit D-4)
- 2) On December 29, 2016, the Appellant underwent a reevaluation to determine continued medical eligibility for the ADW Program and to assign the appropriate service level. (Exhibit D-2)
- 3) KEPRO Nurse [REDACTED] completed a Pre-Admission Screening (PAS) form with the Appellant to assess her functional abilities in the home. (Exhibit D-2)
- 4) Nurse [REDACTED] noted on her assessment that the Appellant was unable to touch her face and that she was unable to observe the Appellant transferring or walking because she was experiencing a high level of pain. (Exhibit D-2)
- 5) On the December 2016 PAS, the Appellant was assessed with a functional ability of a Level 2 (physical assistance) in the area of eating, and a Level 3 (one person assistance) in the area of transferring. (Exhibit D-2)
- 6) Nurse [REDACTED] assessed the Appellant with a total of 25 service level points based on the information derived from the medical evaluation. (Exhibit D-2)
- 7) On December 30, 2016, the Respondent issued notice to the Appellant of its decision to reduce her service hours from Level D to Level C as a result of the assessment by Nurse [REDACTED] (Exhibit D-6)
- 8) A minimum of twenty-six (26) points are required for the Appellant to continue receiving services at a Level D. (Exhibit D-1)
- 9) Due to Appellant's severe arthritis, she has difficulty with raising her arms to feed herself.
- 10) The Appellant is wheelchair bound and is assessed at a Level 4 (2 person assistance) for walking and a Level 4 (total assistance) for wheelchair. (Exhibits D-2, D-3)

APPLICABLE POLICY

Chapter 501 of the ADW Services Manual, at §§501.9.1.1, provides the applicable policy regarding the point system and corresponding program service levels. This policy reads:

501.9.1.1 Service Level Criteria

There are four Service Levels for Personal Attendant services. Points will be determined as follows based on the following sections of the PAS:

Section	Description of Points
#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 at Level 3 or Level 4 in order to get points 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

Total number of points possible is 44.

501.9.1.2 Service Level Limits

Traditional Service Levels

Level	Points Required	Range of Hours Per Month (for Traditional Members)
A	5-9	0 – 62
B	10-17	63 – 93
C	18-25	94 – 124
D	26-44	125 – 155

The hours of service are determined by the service level and the Person-Centered Assessment. Please note, the levels are a range of hours and are to be used to meet daily needs. Maximum hours are not guaranteed if the need is not identified. If the minimum hours awarded are not being utilized, the reason must be documented in the Service Plan. If a person reports formal Personal Attendant services to assist with ADLs are not needed, a request for closure must be submitted.

DISCUSSION

The Appellant underwent a PAS review in December, 2016. The reviewing nurse, [REDACTED], assessed the Appellant with 25 service level points based on the information derived from the medical evaluation, which equates to a Level C (service limit of 94 – 124 hours). The Appellant previously had been determined to require a Level D (service limit of 125 – 155 hours), with 26 service level points assessed after a November 2016 level of care review. The Appellant's representative, [REDACTED], proposed the Appellant should be awarded additional points in the areas of eating and transferring.

In order to rise from a Level C a Level D service level, the Appellant needs to have at least one (1) additional point awarded.

In the functional assessment for eating, Nurse [REDACTED] testified that during the 2016 PAS assessment, the Appellant was observed to be knitting, and had reported that although she could not cut her own food, she was able to feed herself. However, in the PAS Overall Comments section, Nurse [REDACTED] reported that the Appellant was unable to touch her face, which casts doubt as to the Appellant's ability to feed herself. Mr. [REDACTED] testified that the Appellant from time-to-time attempts to feed herself, however, because she has difficulty with raising her arms, he usually ends up feeding her. He also points out that the activity of knitting does not require the Appellant to raise her arms, with which she does have difficulty. It is noted that in the November 2016 level of care review, the Appellant's need for total assistance with eating was documented by her physician and was taken into consideration in assessing an additional point in the functional area of eating. The testimony and evidence presented showed that the Appellant should have been assessed a Level 3 (total feed).

In the functional assessment for transferring, Nurse [REDACTED] testified that she observed the Appellant transfer from her chair to the wheelchair with the use of a rollator walker and a one person assist. However, in the PAS Overall Comments section, Nurse [REDACTED] reported that she was unable to observe the Appellant transferring or walking. In noting this discrepancy, Nurse [REDACTED] then testified that she based her assessment for transferring on the equipment she saw available in the Appellant's house at the time. Mr. [REDACTED] testified that the Appellant does not have a rollator walker in her house and requires two person assistance for transferring. It is noted that on a previous PAS assessment done in February 2016, the Appellant was assessed as requiring 2 person assistance in the area of transferring. Since the time of that previous PAS, the testimony and evidence showed that the Appellant has had some serious medical issues and does not support a finding that her need for assistance with transferring has improved. Moreover, Nurse [REDACTED] later testimony showed that she had not observed the Appellant transfer with only one person assistance on the day of the December

2016 PAS assessment. The testimony and evidence presented showed that the Appellant should have been assessed a Level 4 (2 person assistance) in the area of transferring.

The testimony and evidence showed that the Appellant should have been awarded an additional point in the area of eating and in the area of transferring; thus giving the Appellant a total of 27 points on her December 2016 PAS. Therefore, the Appellant's service level hours should remain at a Level D.

CONCLUSIONS OF LAW

1. Policy provides that an individual's service level for the ADW Program is determined by the number of points awarded on the PAS assessment tool for documented medical conditions and functional abilities that require nursing services.
2. The Appellant established that she should have been awarded an additional point in the area of eating.
3. The Appellant established that she should have been awarded an additional point in the area of transferring.
4. The Appellant should have received a total of 27 service level points on her December 2016 PAS.
5. At least twenty-six (26) service level points are needed in order to qualify for a Level D service level for 125 – 155 service hours per month.
6. As the Appellant established she should have received a total of 27 service level points, in accordance with existing policy, she qualifies for a Level D service level.
7. The Respondent's decision to award the Appellant a Level C service level cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's proposal to reduce the Appellant's Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program service level services to a Level C.

ENTERED this 27th day of April 2017.

**Lori Woodward
State Hearing Officer
Member, Board of Review**