



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF THE INSPECTOR GENERAL

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Sheila Lee  
Interim Inspector General

December 13, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-2226

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS  
State Hearing Officer  
State Board of Review

Enclosure: Decision Recourse  
Form IG-BR-29

CC: Tamra Grueser, Bureau of Senior Services

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

██████████,

**Appellant,**

v.

**ACTION NO.: 22-BOR-2226**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on November 16, 2022 on an appeal filed with the Board of Review on October 3, 2022.

The matter before the Hearing Officer arises from the Respondent's August 21, 2022 decision regarding the approved number of Medicaid Aged and Disabled Waiver (ADW) homemaker service hours.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Joel Pitts, RN, KEPRO. The Appellant appeared *pro se* by ██████████, who has Medical Power of Attorney. Appearing as a witness for the Appellant was ██████████, RN, ██████████. All witnesses were sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual Excerpts
- D-2 KEPRO Notice, dated August 21, 2022
- D-3 Pre-Admission Screening (PAS), submitted August 12, 2022
- D-4 PAS Summary, dated August 12, 2022
- D-5 Annual PAS, dated November 2, 2021
- D-6 PAS Summary, dated November 2, 2021
- D-7 Medication List 2022
- D-8 Medication List 2021

- D-9 ADW Medical Necessity Evaluation Request, signed June 2022  
D-10 ADW Medical Necessity Evaluation Request, signed June 2021

**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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) The Appellant is a recipient of Medicaid Aged and Disabled Waiver (ADW) homemaker services (Exhibit D-2).
- 2) On August 21, 2022, the Respondent issued a notice advising the Appellant that she was approved for 124 hours maximum per month of homemaker services based on the Appellant's medical needs (Exhibit D-2).
- 3) The notice reflected that the Respondent's decision was based on the Aged and Disabled Waiver (ADW) Policy Manual and the Pre-Admission Screening (PAS) Form (Exhibit D-2).
- 4) On August 12, 2022, KEPRO completed a PAS for ADW eligibility re-evaluation (Exhibit D-3).
- 5) The Appellant and the Appellant's representative, [REDACTED], (hereafter [REDACTED]) participated in completion of the PAS and provided agreement with the information contained within the PAS (Exhibit D-3).
- 6) At the time of the PAS, the Appellant did not receive skilled nursing care (Exhibit D-3).
- 7) At the time of the PAS, the Appellant had moderate medical conditions/symptoms including *angina-rest, angina exertion, dyspnea, significant arthritis, pain, diabetes, mental disorders, and urinary incontinence* (Exhibit D-3).
- 8) At the time of the PAS, the Appellant did not have a decubitus (Exhibit D-3).
- 9) At the time of the PAS, the Appellant was physically unable to vacate the building in the event of an emergency (Exhibit D-3).
- 10) At the time of the PAS, the Appellant required Level 2-Physical Assistance in the areas of *eating, bathing, dressing, and grooming* (Exhibit D-3).
- 11) At the time of the PAS, the Appellant was incontinent of bladder and bowel less than three

times per week (Exhibit D-3).

- 12) On November 2, 2021, the Appellant was previously assessed as Level 3-Incontinent (Exhibit D-5).
- 13) At the time of the PAS, the Appellant was intermittently disoriented (Exhibit D-3).
- 14) At the time of the PAS, the Appellant required Level 2-Supervised/Assistive Device when *transferring* (Exhibit D-3).
- 15) At the time of the PAS, the Appellant required Level 3-One Person Assistance when *walking* (Exhibit D-3).
- 16) At the time of the PAS, the Appellant was assessed as Level 2-Impaired/Correctable in the areas of *vision* and *hearing* (Exhibit D-3).
- 17) At the time of the PAS, the Appellant was assessed as Level 3-Understandable with aids in the area of *communication* (Exhibit D-3).
- 18) At the time of the PAS, the Appellant required continuous oxygen, inhalation therapy, and "INR checks weekly" (Exhibit D-3).
- 19) At the time of the PAS, the Appellant was capable of administering her own medications with prompting/supervision (Exhibit D-3).
- 20) The Appellant has a diagnosis of Senile Dementia (Exhibit D-3).
- 21) The Appellant's prognosis is deteriorating (Exhibit D-3).
- 22) The Appellant's rehabilitative potential is limited (Exhibit D-3).
- 23) The Appellant was eligible for 24 points based on the her abilities at the time of the PAS (Exhibits D-3 and D-4).
- 24) On November 9, 2022, [REDACTED] reported to [REDACTED] RN, (hereafter, [REDACTED]) that the Appellant was incontinent daily and required daily use of incontinence products.

### **APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual §§ 501.11.2.1 and 501.11.2.2 provided in pertinent parts:**

The total number of points possible is 44. Service levels for personal attendant services are determined based on the following sections as reflected on the Pre-Admission Screening (PAS):

- #23: Medical Conditions/Symptoms - 1 point for each (can have total of 12)
- #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 4 to get points for j. (wheeling).
- #27: Profession 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 service level range of hours is determined by the service level and the Case Management and RN or PPL Assessment.

Traditional Service Levels Include:

Level	Points Required	Range of Hours per Month
A	5-9	0-62
B	10-17	63-93
C	18-25	94-124
D	26-44	125-155

### DISCUSSION

The PAS reflected that [REDACTED] participated in completion of the PAS and provided agreement at the time to the information contained within the PAS. The Appellant's representative did not dispute that the information provided to KEPRO was accurate when the PAS was completed.

#### Medical Conditions/Symptoms and Decubitus

Pursuant to the policy, the Appellant may receive one point for each assessed medical condition/symptom indicated on the PAS. The PAS reflected that the Appellant received one point each for *angina-rest*, *angina exertion*, *dyspnea*, *significant arthritis*, *pain*, *diabetes*, *mental disorders*, and *urinary incontinence*. No evidence was entered to support that the Appellant had additional medical conditions/symptoms *paralysis*, *dysphagia*, *aphasia*, *contractures*, or *decubitus*. Because the preponderance of evidence failed to establish that the Appellant had

additional medical conditions/symptoms present at the time of the PAS, additional points for medical conditions/symptoms cannot be awarded.

### **Functional Abilities**

Pursuant to the policy, the Appellant may receive one point each for functional abilities assessed as Level 2 for *eating, bathing, dressing, grooming, bowel continence, bladder continence, orientation, transfer, and walking*. To be awarded two points, the functional abilities must be assessed on the PAS as Level 3 or higher.

#### ***Eating, bathing, dressing, and grooming***

The Appellant received one point each in these areas. No evidence was presented to establish that the Appellant should have been assessed at a higher level in these areas. Because the evidence failed to establish that the Appellant should have been assessed as a Level 3 or higher in these areas, additional points cannot be awarded.

#### ***Continence - bowel and bladder***

To be assessed as Level 3 in the areas of bladder incontinence and bowel incontinence, the evidence had to reflect that the Appellant was incontinent daily. The evidence established that the Appellant had a diagnosis of urinary incontinence and received a point for that diagnosis.

During the hearing, the Appellant's witness, [REDACTED], testified that [REDACTED] had reported daily incontinence and use of incontinence supplies to her. The information reported by [REDACTED] to [REDACTED] in November 2022, conflicted with the information reported by [REDACTED] to KEPRO when the PAS was completed. While the evidence reflected that the Appellant had daily incontinence on November 9, 2022 and previously on the November 2, 2021 PAS, the preponderance of the evidence failed to establish that the Appellant had daily incontinence and used daily incontinence supplies when the instant PAS was completed. At the time of the current PAS, [REDACTED] participated in the PAS and acknowledged her agreement to the contents of the PAS on the day it was completed. The Appellant's representative did not dispute that she provided the information reflected on the current PAS. The Respondent is required to consider the Appellant's functioning based on the PAS to determine the current ADW Service Level. Because the evidence failed to establish that the Appellant should have been assessed as a Level 3 or higher in this area, additional points cannot be awarded.

#### ***Orientation***

To be assessed as Level 3, the Appellant had to be totally disoriented at the time of the PAS. The PAS reflected that the Appellant was intermittently disoriented at the time of the PAS completion. Because no evidence was entered to establish that the Appellant was totally disoriented at the time of the PAS and should have been assessed as a Level 3, additional points cannot be awarded.

#### ***Hearing and Vision***

To receive a point in these areas, the Appellant had to be assessed as Level 4 at the time of the PAS. The Appellant was assessed as Level 2-Impaired/Correctable in the area of *hearing*. During the hearing, the Appellant's witness testified that the Appellant's physician has prescribed new hearing aids but that the Appellant cannot afford to purchase them. The Respondent's witness

testified that during the PAS, the Appellant required repeats but could understand communication if spoken to in a loud voice. The preponderance of evidence established that the Respondent correctly assessed the Appellant's functional ability in the area of *hearing*.

The Appellant was assessed as a Level 2-Impaired/Correctable in the area of *vision*. No evidence was submitted to indicate that the Appellant should have been assessed at a higher level.

### ***Communication***

Pursuant to the policy, two points is the maximum that may be awarded in this area. To be awarded two points, the Appellant had to be assessed on the PAS as Level-3. Pursuant to the evidence, the Appellant was assessed as a Level-3 and was awarded two points in this area. Because the Appellant received the maximum amount of points available for this area, no additional points could be awarded.

### ***Transfer***

To receive a point in this area, the Appellant had to be assessed as Level 2 at the time of the PAS. The PAS reflected that the Appellant was assessed as Level 2. The PAS summary indicated that a point was correctly awarded in this area.

### ***Walking***

The evidence reflected that at the time of the PAS, the Appellant was assessed as Level 3 in this area. Pursuant to the policy, Level 3 in the area of *walking* should receive 2 points. The PAS summary indicated the Appellant was appropriately awarded 2 points in this area.

### **Professional and Technical Care Needs**

Pursuant to the policy, the Appellant may receive one point in this area for continuous oxygen. The evidence reflected that the Appellant received a point for continuous oxygen. Although the PAS reflects that the Appellant required other professional and technical care needs, the policy does not indicate that any other professional or technical care needs are eligible to receive a point. Because the Appellant received the maximum amount of points available for this area, no additional points could be awarded.

### **Medication Administration and Dementia**

Pursuant to the policy, the Appellant may receive one point in each of these areas. The evidence reflected that the Appellant received a point in each of these areas. Because the Appellant received the maximum amount of points available for these areas, no additional points could be awarded.

### **Prognosis**

Pursuant to the policy, the Appellant may receive one point in this area if the Appellant's prognosis is terminal. The PAS reflected that the Appellant's prognosis was deteriorating at the time of the PAS. Because no evidence was submitted to establish that the Appellant's prognosis was terminal at the time of the PAS, a point cannot be awarded in this area.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for ADW Service Level C, the Appellant's PAS score had to fall within an 18-25 point range.
- 2) To be eligible for ADW Service Level D, the Appellant's PAS score had to fall within the 26-44 point range.
- 3) The preponderance of evidence established that the Respondent correctly awarded the Appellant 24 points on the PAS.
- 4) The preponderance of evidence established that the Appellant is eligible for ADW Service Level C.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision regarding the Appellant's ADW Service Level.

ENTERED this 13<sup>th</sup> day of December 2022.

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**Tara B. Thompson, MLS**  
State Hearing Officer