



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 11, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1191

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

Encl: Claimant'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**

██████████,
Claimant,

v.

Action # 15-BOR-1191

**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 10, 2015, on a timely appeal filed January 29, 2015.

The matter before the Hearing Officer arises from the November 3, 2014 decision of the Respondent to decrease the Claimant's homemaker service hours under the Aged and 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 from West Virginia Medical Institute (WVMI). The Claimant appeared by her caretaker/daughter, ██████████. 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 and Disabled Waiver Services, §§501.5.1.1(a) – 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) form for ADW services, dated October 27, 2014
- D-3 PAS Summary, dated October 27, 2014
- D-4 PAS form for ADW services, dated November 13, 2012
- D-5 Notice of Decision, dated November 3, 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 October 27, 2014, the Claimant was re-evaluated to determine medical eligibility for the Aged and Disabled Waiver (ADW) Program. As a result of this re-evaluation, the Claimant was determined to be medically eligible for the program with ADW services to be provided at a Level B, or no more than 93 service hours per month. (Exhibit D-5)
- 2) West Virginia Medical Institute (WVMI) Registered Nurse, [REDACTED] (RN [REDACTED]) completed the medical assessment of the Claimant and documented her findings in a Pre-Admission Screening (PAS) form. (Exhibit D-2) The assessed levels documented on the PAS correspond with a point system used to determine the Level of Care for ADW services. Claimant was assessed to have a total of 17 points. (Exhibits D-2 and D-3)
- 3) The Claimant's representative, [REDACTED] (Ms. [REDACTED]) proposed an additional point for the functional area of walking.
- 4) On the 2014 PAS, RN [REDACTED] noted that the Claimant was physically unable to vacate the building in an emergency due to balance deficits. Additionally, RN [REDACTED] noted the Claimant needed assistance with transferring due to poor balance, and also noted the Claimant to have poor balance and an unsteady gait while walking, with near falls. The Claimant was assessed at a Level 1 (independent) in the functional area of walking. (Exhibit D-2)
- 5) The walking demonstration during the evaluation encompassed a total of approximately 10 steps. Ms. [REDACTED] reported that the Claimant typically does not walk independently, and that it was unusual for her to do so by herself. The Claimant has assistive devices available for her use, and she often uses the kitchen counter and furniture to assist her when she walks around the house. Ms. [REDACTED] also testified that the Claimant has pain in her knees from arthritis, and sometimes her knees "give way" when she is walking. Ms. [REDACTED] testified that the Claimant appears to "propel herself forward" when attempting to walk, and is unsteady.
- 6) The 2014 PAS notes that the Claimant has a diagnosis of significant arthritis in her knees and hands. (Exhibit D-2)

APPLICABLE POLICY

Chapter 501 of the ADW Services Manual, at §§501.5.1.1(a) – 501.5.1.1(b), provides the applicable policy regarding the point system and corresponding program service levels. This policy reads:

501.5.1.1(a) Service Level Criteria

There are four Service Levels for Personal Assistance/Homemaker 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.

501.5.1.1(b) 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

DISCUSSION

The Claimant was evaluated at a Level B with a total of 17 Level of Care (LOC) points assessed on her 2014 PAS evaluation. In order to receive the next level of service, Level C, the Claimant needs an additional LOC point. The testimony and evidence supported the award of an additional point in the functional area of walking. The Claimant’s representative, who is also her caretaker/daughter, gave credible testimony that the Claimant does not typically walk unassisted, needing furniture assist or an assistive device such as a walker or cane. Additionally, the evidence showed that the Claimant has a documented diagnosis of arthritis and experiences pain in her knees, and often experiences falls or near

falls. It is undisputed that the Claimant has poor balance and an unsteady gait, and is well documented in RN [REDACTED] 2014 PAS. Although the Claimant demonstrated independent walking, the testimony and evidence showed that the Claimant usually does not accomplish this without some type of assistance, and should have been awarded an additional LOC point in the functional area of walking, for a total LOC points of 18.

CONCLUSION OF LAW

Policy provides that an individual's LOC for the Aged and Disabled Waiver Program is determined by the number of points awarded on the PAS assessment tool for documented medical conditions that require nursing services. The Claimant was awarded 17 LOC points on a PAS assessment completed by WVMI in October 2014. An additional point was found to be established in the area of walking. In accordance with existing policy, an individual with 18 points qualifies for a Level C Level of Care.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision to reduce the Claimant's Level of Care service hours to a Level B through the Medicaid Aged and Disabled Title XIX (HCB) Waiver Services Program.

ENTERED this 11th day of March 2015.

Lori Woodward, State Hearing Officer