



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
416 Adams St., Suite 307  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

October 19, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-2978

Dear Mr. [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,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

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

cc: Tammy Grueser, RN, BoSS

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2978**

**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 October 15, 2015, on an appeal filed September 3, 2015.

The matter before the Hearing Officer arises from the August 27, 2015 decision by the Respondent to decrease the Appellant's homemaker service hours under the Aged/Disabled Waiver Medicaid Program.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN, APS Healthcare. The Appellant appeared for the hearing and was represented by his mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1           Aged & Disabled Waiver Services Manual Policy Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2           Pre-Admission Screening (PAS) completed on 8/26/15
- D-3           PAS Summary dated 8/26/15
- D-4           Notice of Decision dated 8/27/15

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 August 27, 2015, Respondent issued notice (D-4) to Appellant informing him of its decision to decrease his Medicaid Aged/Disabled Waiver homemaker services (Level of Care) not to exceed 62 hours per month, as the result of a Pre-Admission Screening (PAS) completed on August 26, 2015 (D-2).
- 2) As a matter of record, Respondent stipulated that the Appellant was awarded eight (8) points on the August 2015 PAS, which results in a level “A” Level of Care (5 to 9 points).
- 3) Appellant’s mother/representative contended that Appellant should remain a level “B” Level of Care (requires 10-17 points) and receive 63 to 93 homemaker service hours per month. Appellant’s mother/representative contended that the Appellant should have been awarded one (1) additional point in walking (2 total points/Level-3), as that is what he has been awarded in the past, and one (1) additional point for medication administration. In addition, she noted that the assessment of his grooming ability was inaccurate, as he is also unable to cut his fingernails.
- 4) APS Healthcare Registered Nurse [REDACTED] acknowledged that the Appellant is unable to cut his fingernails, and while she may have omitted that documentation, the Appellant is able to participate in his grooming needs (requires physical assistance, not total care), which would result in no change to the Level of Care points awarded in the functional area of grooming. Nurse [REDACTED] further noted that the Appellant could not be awarded any Level of Care points in the functional area of medication administration, as the Appellant is not currently taking any prescription medications. Specific to the area of walking/ambulation, the Appellant’s functional abilities are assessed based on his functional ability in his home. Because the Appellant can walk with the assistance of holding on to walls/furniture (assistive device), he was assessed at a Level-2 and received one (1) Level of Care point. Nurse [REDACTED] testified that Appellant would only qualify for two (2) Level of Care points in walking/ambulation if he required hands-on physical assistance to walk/ambulate in his home.

## APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 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- Decubitis- 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

#34- 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**

A review of the evidence confirms that the Appellant was correctly awarded eight (8) Level of Care points stemming from a PAS evaluation conducted on August 26, 2015. No additional points were established as a result of evidence presented at the hearing.

#### **CONCLUSIONS OF LAW**

- 1) Policy provides that an individual's Level of Care (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.
- 2) The Appellant was awarded 8 LOC points on a PAS assessment completed by APS Healthcare in August 2015.
- 3) Evidence submitted at the hearing fails to identify any additional LOC points.
- 4) In accordance with existing policy, an individual with 8 points qualifies for a Level "A" LOC (0-62 hours per month).

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Department's proposal to decrease the Appellant's homemaker service hours through the Aged/Disabled Waiver Medicaid Program.

**ENTERED this \_\_\_\_\_ Day of October 2015.**

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**Thomas E. Arnett  
State Hearing Officer**