



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

February 2, 2015



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 14-BOR-3590

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,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra R. Grueser, RN, WV Bureau of Senior Services  
[REDACTED], [REDACTED]

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

██████████,

**Claimant,**

v.

**ACTION NO.: 14-BOR-3590**

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on January 15, 2015, on an appeal filed October 30, 2014.

The matter before the Hearing Officer arises from the October 22, 2014, decision by the Respondent to reduce the Claimant's monthly service hours in the Title XIX Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, West Virginia Medical Institute. The Claimant appeared *pro se*, by her representative ██████████, the Claimant's Homemaker-RN from the ██████████. Appearing as witnesses for the Claimant were her son ██████████, and ██████████ from ██████████, ██████████, RN, from the ██████████, and ██████████, Claimant's homemaker from the ██████████. All participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Pre-Admission Screening (PAS) completed on October 17, 2014
- D-2 PAS Summary dated October 22, 2014
- D-3 Change in Level of Care notification, dated July 1, 2014
- D-4 PAS completed on October 7, 2013
- D-5 Notice of Decision dated October 22, 2014
- D-6 Request for service hours increase from ██████████, ██████████, along with supporting documentation, dated June 30, 2014

D-7 Aged and Disabled Waiver Services Manual Policy Sections 501.5.1.1(a) and 501.5.1.1(b)

**Claimant's Exhibits:**

C-1 Aged and Disabled Waiver Program Member Assessment from the [REDACTED], dated September 25, 2014

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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) The Department's witness conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver (ADW) Program with the Claimant on October 17, 2014 (Exhibit D-1). Present for the PAS were the Claimant, her homemaker [REDACTED], and [REDACTED], RN, of [REDACTED]. The Department's witness assessed the Claimant with a total of twenty-two (22) Level-of-Care points on the PAS. The Department approved the Claimant for a Level "C" of Care, with monthly service hours not to exceed 124 per month. The Department reported its findings to the Claimant in a Notice of Decision dated October 22, 2014 (Exhibit D-5).
- 2) The Claimant's representative contended that the assessing nurse should have awarded her with additional Level-of-Care points for the medical conditions of dyspnea, angina at rest and angina upon exertion, the functional abilities of bathing, dressing, grooming and wheeling, and the professional and/or technical need of continuous oxygen.
- 3) The "Describe Medical Conditions/Symptoms" subsection of the October 2014 PAS (Exhibit D-1) reads as follows regarding the medical condition of dyspnea: "No [diagnosis], no [prescription medication]."
- 4) The "Describe Medical Conditions/Symptoms" subsection of the October 2014 PAS (Exhibit D-1) reads as follows regarding the medical conditions of angina at rest and upon exertion: "No [diagnosis], no [prescription medication]."
- 5) At the beginning of the "Describe Functional Ability in the Home" section of the October 2014 PAS (Exhibit D-1), the assessing nurse wrote as follows concerning the Claimant's general functioning, "During visit [Claimant] was able to raise arms above her head with mild difficulty. Was able to reach to the knees while sitting in the chair. Hand grips are weak bilaterally."
- 6) The "Describe Functional Ability in the Home" section of the October 2014 PAS (Exhibit D-1) reads as follows regarding the functional ability of bathing: "She has a shower chair. [Homemaker] says that member is having difficulty getting in/out of the shower; therefore, she sponge-bathes. She washes the private area on the front herself. [Homemaker]

completes all other aspects of bathing for her. Assessed as requiring physical assistance with bathing.” The Claimant’s representative argued that just because the Claimant could wash one area of the front of her body, that did not constitute “physical assistance.” She added that at the time of the PAS, the Claimant’s then-homemaker totally bathed her. The Claimant’s current homemaker testified that she has always completely bathed her.

- 7) The “Describe Functional Ability in the Home” section of the PAS (Exhibit D-1) reads as follows regarding the functional ability of dressing: “[Homemaker] says that she has to assist with all aspects of dressing, which includes areas from the shirt down to the socks/shoes. The shoes do not tie. [Homemaker] has to button the clothing for her. Assessed as requiring physical assistance with dressing.” The Department’s witness testified that because the Claimant could raise her arms so that someone could put on her shirts, she could participate in dressing herself. The Claimant’s representative argued that just because the Claimant could raise her arms, this did not mean the Claimant could dress herself, could button her clothes or could determine if a shirt were upside-down or backwards.
- 8) The “Describe Functional Ability in the Home” section of the PAS (Exhibit D-1) reads as follows regarding the functional ability of grooming: “[Homemaker] is going to get her a shower cap and wash member’s hair. She has dentures, but does not wear them. [Homemaker] applies the lotion and deodorant. [REDACTED] is working on having someone come in to trim her nails. Based on ability to raise/lower arms today, was assessed as requiring physical assistance with grooming.” The Claimant’s representative argued that the Claimant could raise her arms so that her homemaker could apply deodorant, but she could not participate in washing or rinsing her hair or in any other aspect of grooming.
- 9) The “Describe Functional Ability in the Home” section of the PAS (Exhibit D-1) reads as follows regarding the functional ability of wheeling: “[Claimant] has a manual wheelchair. [Homemaker] denies use of this in the home. Member agreed.” The Claimant’s witness, her case manager from [REDACTED], testified that Claimant did use her wheelchair in her home and could not wheel herself. She testified that the Claimant denied wheelchair use during the October 2014 PAS, and speculated that this was to avoid being placed in a nursing home.
- 10) The “Professional and Technical Care Needs” of the October 2014 PAS (Exhibit D-1) is not marked for item (e), continuous oxygen.
- 11) The Claimant’s witness, her son, stated that his mother was in need of total care during the October 2014 PAS, and she is worse now.

### **APPLICABLE POLICY**

Aged and Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) establish the Level of Care 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
- #34- Prognosis- 1 point if terminal

The total number of points allowable is 44.

### **SERVICE LEVEL LIMITS**

- Level A – 5 - 9 points – 0 to 62 hours per month
- Level B – 10 - 17 points – 63 to 93 hours per month
- Level C – 18 - 25 points – 94 to 124 hours per month
- Level D – 26 - 44 points – 125 to 155 hours per month

### **DISCUSSION**

The Claimant's physician did not provide confirmation of the Claimant's medical conditions of dyspnea, angina at rest or angina during exertion, so the assessing nurse could not award the Claimant with Level-of-Care points for any of these medical conditions or symptoms. Similarly, the Claimant's physician did not provide an order or other documentation that the Claimant required continuous oxygen, so the assessing nurse could not award the Claimant with a Level-of-Care point for that area of the PAS.

The Claimant's representative and witnesses did not provide testimony or evidence to indicate that she required total care for the abilities of bathing, dressing or grooming. The assessing nurse recorded on the PAS that the Claimant demonstrated her ability to raise her arms and reach down to her knees. Since she could participate in bathing, dressing and grooming, even to a slight degree, this meets the definition of physical assistance and not total care. The assessing nurse acted correctly in awarding one point for each of these functional abilities.

The Claimant's representative and witnesses did not provide testimony or evidence to indicate that the Claimant should have received Level-of-Care points for the functional ability of wheeling. Both the Claimant and her homemaker told the assessing nurse that the Claimant did

not use the wheelchair in the home, so the nurse was correct in not awarding Level-of-Care points for this functional ability.

### **CONCLUSION OF LAW**

The Department assessed the Claimant with twenty-two (22) Level-of-Care points on the PAS conducted on October 17, 2014. The Claimant did not provide evidence to support that the Department should have assessed her with additional Level-of-Care points for the medical conditions of dyspnea, angina at rest or angina during exertion, the functional abilities of bathing, dressing, grooming or wheeling, or for the use of continuous oxygen. The Claimant qualifies for a service level of “C” in the Aged and Disabled Waiver Program, as defined in BMS Provider Manual §501.5.1.1(a) and (b).

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Department’s proposal to reduce the Claimant’s service level from “D” to “C” in the Aged and Disabled Waiver Program.

**ENTERED this 2<sup>nd</sup> Day of February, 2015.**

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**Stephen M. Baisden  
State Hearing Officer**