



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

January 22, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 14-BOR-3727

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau of Senior Services  
[REDACTED]

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

██████████,

**Claimant,**

v.

**Action Number: 14-BOR-3727**

**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 January 21, 2015, on an appeal filed November 18, 2014.

The matter before the Hearing Officer arises from the November 5, 2014, decision by the Respondent to reduce the Claimant's homemaker hours under the Aged/Disabled Waiver program from a Level D to a Level C.

At the hearing, the Respondent appeared by Tamra Grueser, RN, with the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN, with the West Virginia Medical Institute. The Claimant appeared *pro se*. Appearing as witnesses for the Claimant were ██████████, Case Manager with ██████████ and the Claimant's daughter and homemaker, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

D-1 WV Medicaid Provider Manual Chapter 501 - Aged/Disabled Waiver Services Policy, §§501.5.1 and 501.5.1.1

D-2 Pre-Admission Screening (PAS) dated October 29, 2014

D-3 PAS Summary dated October 29, 2014

D-4 Medical Necessity Evaluation Request form dated October 1, 2014

D-5 Notice of Decision - Re-Evaluation Assessment dated November 5, 2014

D-6 Notice of Decision - Level of Care Change dated October 27, 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 29, 2014, the Claimant was evaluated to determine continued medical eligibility for the Aged/Disabled Waiver (ADW) Program. West Virginia Medical Institute (WVMI) Nurse [REDACTED] completed a Pre-Admission Screening (PAS) (D-2) form with Claimant to assess her functional abilities in the home. Nurse [REDACTED] assessed the Claimant with twenty-five (25) level-of-care points based on the information derived from the medical evaluation.
- 2) On November 5, 2014, the Respondent issued notice (D-5) to the Claimant of its decision to reduce her ADW homemaker hours from Level D to Level C as a result of the assessment by Nurse [REDACTED]. Twenty-six (26) points (D-1) are required for the Claimant to continue receiving services at a Level D care.
- 3) The Claimant's witnesses contested the Claimant not receiving an additional point in the area of bathing. The Claimant's daughter and homemaker, [REDACTED], testified that she bathes her mother completely. At times the Claimant will attempt to wash her face or head, but Ms. [REDACTED] stated she has to wash those areas again. Ms. [REDACTED] stated most of the time, the Claimant will hold a washcloth over her eyes during bathing and that is the extent of her participation in the activity.
- 4) [REDACTED], the Claimant's case manager, was present during the October 2014 medical evaluation and contended that although the Claimant reported to Nurse [REDACTED] that she could assist in her bathing, Ms. [REDACTED] corrected her mother and reported that the Claimant required total care in the area.

### **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 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
  - #35 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**

The Claimant was assessed as a Level 2 – physical assistance – in the area of bathing based on her disclosure to the assessing nurse that she was able to wash certain areas of her body. The Claimant's witnesses provided testimony that the Claimant does not participate in bathing, and requires total care in the area. While the documentation found in the October 2014 PAS indicated that the Claimant participates in bathing, credible testimony from the Claimant's witnesses held that the Claimant overestimates her abilities and does not assist in her bathing. This information was made available to the assessing nurse at the time of the medical evaluation, and the Claimant will be awarded one (1) additional point in the area of bathing.

### **CONCLUSIONS OF LAW**

Whereas the Claimant was found to require total care in the area of bathing, one (1) additional point will be added to the Claimant's level-of-care determination. The Claimant continues to meet the medical criteria for Level D care.

**DECISION**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to reduce the Claimant's homemaker hours under the Aged/Disabled Waiver program from a Level D to a Level C care.

**ENTERED this 22<sup>nd</sup> day of January 2015**

---

**Kristi Logan**  
**State Hearing Officer**