



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

January 15, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 14-BOR-3799

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 # 14-BOR-3799**

**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 14, 2015, on a timely appeal filed December 4, 2014.

The matter before the Hearing Officer arises from the November 26, 2014 proposal 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 *pro se*. Appearing as witness for the Claimant was her caregiver, ██████████ with ██████████. 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 November 20, 2014
- D-3 PAS Summary, dated November 20, 2014
- D-4 Medical Necessity Evaluation Request form, dated October 27, 2014
- D-5 Notice of Decision, Level of Care Change, dated July 28, 2014
- D-6 PAS form for ADW services, dated January 6, 2014
- D-7 Notice of Decision, dated November 26, 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 November 20, 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 C, or no more than 124 service hours per month. (Exhibit D-7)
- 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. 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 22 points\*. (Exhibit D-2)  
  
\*It was noted during RN [REDACTED] testimony that the Claimant was assessed with a Level 3 for wheeling, which no points were awarded on the computer calculation. The Department conceded to awarding the Claimant an additional two (2) points in the area of wheeling, for a total of 22 points.
- 3) The Claimant proposed additional points for the medical condition of *contractures*, the functional area of *walking*, and in the areas of *vision*, *communication*, *orientation*, and *dementia*.
- 4) RN [REDACTED] testified that there was no diagnosis of contractures, Alzheimer's, or dementia on the Medical Necessity Evaluation Request (Exhibit D-4) submitted by the Claimant's physician or on the previous January 2014 PAS (Exhibit D-6). Contractures were denied on both the January 2014 and November 2014 PAS assessments. (Exhibits D-2 and D-6)
- 5) The Claimant's vision and communication were assessed at a Level 2, impaired/correctable and impaired/understandable, respectively, which correlates to no points being awarded in these areas. (Exhibits D-1 and D-2)
- 6) RN [REDACTED] assessed the Claimant in the area of orientation to be at a Level 2, intermittently disoriented, but found her to be alert and oriented during the November 2014 PAS, which were the same findings as on the January 2014 PAS. (Exhibits D-2 and D-6) The Claimant has no diagnosis of dementia.
- 7) RN [REDACTED] assessed the Claimant at a Level 2, supervised/assistive device, for walking, stating that the Claimant was able to demonstrate walking with a walker by herself. (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:

<b>Section</b>	<b>Description of Points</b>
#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 <b>a</b> through <b>i</b> . Level 3 – 2 points for each item <b>a</b> through <b>m</b> <b>i</b> (walking) must be at Level 3 or Level 4 in order to get points for <b>j</b> (wheeling) Level 4 – 1 point for <b>a</b> , 1 point for <b>e</b> , 1 point for <b>f</b> , 2 points for <b>g</b> through <b>m</b>
#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 Hearing Officer must evaluate whether the correct policy was followed given the facts and circumstances at the time of the PAS assessment. There was no testimony to support awarding any additional points other than the two (2) additional points conceded by the Department in the area of wheeling, bringing the total awarded points to 22. However, a total of 26 points is required to be eligible for the next service level. The testimony and evidence supported the assessment made by RN [REDACTED] of Claimant's status at that time of the November 2014 PAS.

## **CONCLUSION OF LAW**

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. The Claimant was awarded 22 LOC points on a PAS assessment completed by WVMi in November 2014. No additional points were found to be established. In accordance with existing policy, an individual with 22 points qualifies for a Level "C" Level of Care.

## **DECISION**

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

**ENTERED this 15<sup>th</sup> day of January 2015.**

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**Lori Woodward, State Hearing Officer**