



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-0955 Fax: (304) 558-1992

Jolynn Marra
Interim Inspector General

November 19, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2240

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Department Representative
[REDACTED], Appellant's Representative

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[REDACTED]

Appellant,

v.

Action Number: 18-BOR-2240

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 [REDACTED]. 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 September 25, 2018, on an appeal filed August 22, 2018.

The matter before the Hearing Officer arises from the August 6, 2018 decision by the Respondent to determine the Appellant's service level of care as level 'C' for the Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as a witness for the Department was Cindy Ray. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was her daughter and representative, [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 BMS Provider Manual (excerpt)
 Chapter 501 Aged and Disabled Waiver (ADW)
 §§ 501.9.1.1 – 501.9.1.2

- D-2 ADW Pre-Admission Screening (PAS) and Summary form
 Date of Assessment: August 4, 2018

- D-3 ADW Request for Service Level Change
Form and supporting documents
Date of Request: April 23, 2018
- D-4 Personal Care Services (PCS) Program
Dual Services Plan of Care
Plan date: May 22, 2018
- D-5 ADW Person Centered Assessment
ADW Service Plan
Signed by Appellant: April 23, 2018
- D-6 Notice of Decision
Notice date: August 6, 2018

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) The Appellant is a recipient of Aged and Disabled Waiver (ADW) services.
- 2) An assessment of the Appellant’s continuing need for ADW services was conducted on August 4, 2018. (Exhibit D-2)
- 3) Cindy Ray, a registered nurse for the Respondent, conducted the August 2018 assessment of the Appellant.
- 4) By notice dated August 6, 2018, the Respondent advised the Appellant that she was determined medically eligible for ADW Services. (Exhibit D-6)
- 5) This notice (Exhibit D-6) additionally set the level of care of ADW Services approved for the Appellant and read, “The number of homemaker service hours approved is based on your medical needs and cannot exceed 124 hours per month.”
- 6) The Appellant was awarded 20 points from the criteria used to determine ADW service levels. (Exhibit D-2)
- 7) The Appellant contested the medical findings of the PAS in the following areas of care: *bathing, dressing, grooming, continence of bladder, continence of bowel, transferring, wheeling, and medication administration.*
- 8) The Appellant was correctly assessed as requiring physical assistance in the area of *bathing.*

- 9) The Appellant was correctly assessed as requiring physical assistance in the area of *dressing*.
- 10) The Appellant was correctly assessed as requiring physical assistance in the area of *grooming*.
- 11) The Appellant was correctly assessed as continent in the area of *continence of bladder*.
- 12) The Appellant was correctly assessed as incontinent in the area of *continence of bowel*.
- 13) The Appellant was correctly assessed as requiring supervision or an assistive device in the area of *transferring*.
- 14) The Appellant was correctly assessed as not using a wheelchair in the home in the area of *wheeling*.
- 15) The Appellant was correctly assessed as requiring prompting and supervision in the area of *medication administration*.

APPLICABLE POLICY

Chapter 501 of the BMS Provider Manual, at §§ 501.9.1.1 – 501.9.1.2, provides the applicable policy regarding service level criteria and service level limits. This policy reads:

501.9.1.1 Service Level Criteria

There are four Service Levels for Personal Attendant 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.

501.9.1.2 Service Level Limits

Traditional Service Levels

Level	Points Required	Range of Hours Per Month (for Traditional)
A	5-9	0 – 62
B	10-17	63 – 93
C	18-25	94 – 124
D	26-44	125 – 155

DISCUSSION

The Appellant has appealed the Respondent’s decision to reduce the Appellant’s service level of care for the ADW Program, from a level ‘D’ to a level ‘C’. The Respondent must show by preponderance of the evidence that the Appellant did not have the minimum of 26 points required to establish a service level ‘D’ for the ADW Program.

The Respondent assessed the medical eligibility and service criteria for the Appellant on August 4, 2018. The assessing nurse’s findings were documented (Exhibit D-2) on a PAS form and the summary of these findings show the Appellant was determined to have 20 points for service level criteria, resulting in a level of care ‘C’ – corresponding to a maximum of 124 service hours per month.

The assessing nurse clearly documented the Appellant does not require total assistance in the areas of *bathing, dressing or grooming*. The Appellant requires physical assistance in these areas but was noted as capable of assisting to some degree.

The assessing nurse documented the Appellant reported incontinence of bladder with a frequency of less than three episodes per week, with the last episode approximately three months before the assessment. The Appellant additionally contested the area of *continence of bowel*, but the Appellant was assessed as incontinent – or Level 3 – in this area and therefore received the maximum number of points allowable by policy.

The assessing nurse witnessed the Appellant transferring on the date of the assessment and assessed her as requiring supervision or an assistive device in this area. The Appellant reported no wheelchair use to the assessing nurse.

The Appellant's representative contended that the Appellant did not answer the nurse's questions honestly on the day of the assessment out of concern she would be placed in a nursing facility. Testimony from the Appellant's representative was particularly unconvincing. Testimony from the Appellant was also unreliable due to the prompting and direction from her daughter. The testimony and documentation of the Respondent's assessing nurse was thorough and convincing.

The Respondent's assessment of the Appellant was correct and its determination of the Appellant's service level of care for the ADW Program was correct.

CONCLUSION OF LAW

Because the Appellant established a total of 26 points in the critical care areas established by ADW policy for service level limits, the Respondent correctly determined the Appellant's level of care as level 'C' for the ADW Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to establish the Appellant's level of care for the ADW Program.

ENTERED this ____ Day of November 2018.

Todd Thornton
State Hearing Officer