



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector General

December 29, 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2370

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter. In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

CC: Tamra Grueser, Bureau of Senior Services

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-2370

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on December 29, 2021 on an appeal filed with the Board of Review on November 15, 2021..

The matter before the Hearing Officer arises from the Respondent's November 9, 2021 decision to decrease the Appellant's Aged and Disabled Waiver (ADW) Program level of care.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness on behalf of the Respondent was Braden Sheick, RN, KEPRO. The Appellant appeared *pro se*. Appearing as witnesses on behalf of the Appellant were ██████████ ██████████, Case Manager, ██████████; and ██████████, RN, ██████████ ██████████. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Chapter 501
- D-2 KEPRO Notice of Decision, dated November 9, 2021
- D-3 ADW Medical Necessity Evaluation Request, dated September 29, 2021
- D-4 Pre-Admission Screening (PAS) Summary, dated November 5, 2021
- D-5 ADW Annual PAS, submitted November 5, 2021
- D-6 PAS Summary, dated October 19, 2021

Appellant's Exhibits:

None

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) On October 19, 2020, a PAS was completed with the Appellant. She was assessed at an ADW service level C (Exhibits D-1 and D-6).
- 2) On November 9, 2021, the Respondent issued a notice advising the Appellant that pursuant to her annual re-evaluation of medical eligibility for the ADW program, she was assessed at an ADW service level B (Exhibits D-1 and D-2).
- 3) The Respondent's determination of the Appellant's ADW service level was based on a PAS submitted November 5, 2021 (Exhibit D-5).
- 4) On the November 5, 2021 PAS, the Appellant scored 17 points (Exhibits D-4 and D-5).
- 5) KEPRO incorrectly omitted scoring a point for the area of *Functional Ability-Transfer* (Exhibits D-4 and D-5).
- 6) The Appellant should have been awarded an additional point for *Functional Ability-Transfer* (Exhibits D-4 and D-5).
- 7) On November 15, 2021, the Bureau for Medical Services received documentation from the Appellant's physician verifying that the Appellant was incontinent of her bowels.
- 8) The Appellant should have been awarded an additional point for *Continent/Bowel* (Exhibits D-4 and D-5).

APPLICABLE POLICY

Bureau for Medical Services (BMS) § 501.11.2.2 provides in part:

To be eligible for an ADW service level C, the member must score 18-25 points.

DISCUSSION

The Respondent reduced the Appellant's ADW service level from level C to level B. The Appellant contested the reduction in service level and contended that she requires ADW service level C. The Respondent bears the burden of proof. The Respondent had to prove by a preponderance of

the evidence that the Appellant's PAS score indicated an ADW service level B. To be eligible for an ADW service level B, the Appellant's PAS score had to fall within a 10-17 point range. To be eligible for an ADW service level C, the Appellant's PAS score had to fall within an 18-25 point range.

During the hearing, the Respondent's witness testified that he incorrectly scored the area of *Functional Ability-Transfer* on the November 5, 2021 PAS and stipulated that the Appellant should have been awarded an additional point for that area.

During the hearing the Respondent argued that the Appellant reported during the PAS that she had bowel continence. However, the Appellant's Hearing Request record contained documentation from the Appellant's physician that indicated the Appellant had bowel incontinence. During the hearing, the Respondent's witness testified that the Appellant had fourteen days from the date of the PAS to submit additional information for consideration. The Respondent's representative testified that the receipt of the Appellant's physician's documentation was received timely and conceded that the Appellant should have been awarded a point in the area of *Continent/Bowel*.

CONCLUSIONS OF LAW

- 1) To be eligible for an ADW service level C, the Appellant's PAS score had to fall within an 18-25 point range.
- 2) The preponderance of evidence verified that the Appellant should have been awarded 19 points on the November 5, 2021 PAS.
- 3) The Respondent incorrectly reduced the Appellant's ADW service level from level C to level B.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to reduce the Appellant's ADW service level from level C to level B.

ENTERED this 29th day of December 2021.

Tara B. Thompson, MLS
State Hearing Officer