



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

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BOARD OF REVIEW  
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M. Katherine Lawson  
Inspector General

August 21, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.:18-BOR-1904

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,

Danielle C. Jarrett  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
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 Number: 18-BOR-1904

**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 July 31, 2018, on an appeal filed June 18, 2018.

The matter before the Hearing Officer arises from the June 13, 2018 decision by the Respondent to deny Level 2 services under Personal Care (PC) Services Program.

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 KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, the Appellant's daughter, and ██████████, the Appellant's Personal Attendant (PA). All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau of Medical Services Provider Manual §§ 501.13.5 through 501.13.7
- D-2 KEPRO Notice of Decision Re-evaluation Assessment, dated June 13, 2018
- D-3 KEPRO Pre-Admission Screening Summary (PAS), dated June 6, 2018
- D-4 KEPRO PAS, dated June 6, 2018
- D-5 KEPRO Pre-Admission Screening Summary (PAS), dated August 17, 2017
- D-6 KEPRO PAS, dated August 17, 2017

**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 Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant was a recipient of Level 2 services based on medical eligibility for Personal Care Services (PCS) obtained from a PAS completed in August 2017 by KEPRO (Exhibit D-5).
- 2) In August 2017, the Appellant was awarded fifteen (15) service level points as derived from the PAS, which equates to Level 2 services (Exhibit D-6).
- 3) On June 6, 2018, [REDACTED], RN with KEPRO, completed a Pre-Admission Screening (PAS) form with the Appellant to assess her functional abilities in the home (Exhibit D-3).
- 4) Based on the results of her evaluation, RN [REDACTED] assessed the Appellant with thirteen (13) service level of care points based on the information derived from the PAS (Exhibit D-4).
- 5) On June 13, 2018, the Respondent issued a notice to the Appellant of its decision to reduce her PCS hours from Level 2 to Level 1 as a result of the PAS (Exhibit D-2).
- 6) A total of 14 to 30 points are required for the Appellant to continue receiving services at a Level 2.
- 7) The Appellant and her witnesses argued that the Appellant should have been awarded additional points for the functional deficits of *bathing*, *transferring*, *walking*, and *wheeling* on her 2018 PAS evaluation.
- 8) The Appellant requires one-person assistance with *bathing*.
- 9) The Appellant requires one-person assistance with *transferring*.
- 10) The Appellant requires one-person assistance with *walking*.
- 11) The Appellant requires occasional situational use of her wheelchair within her home.

### **APPLICABLE POLICY**

West Virginia Bureau for Medical Services (BMS) Personal Care Services Policy Manual Section 517.13.5 establishes the Service Level criteria. There are two (2) Service Levels for Personal Care Services (PCS), and points are determined based on the following sections of the PAS:

- #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)
- #27 Professional and Technical Care Needs – 1 point for continuous oxygen
- #28 Medication Administration – 1 point for b. or c.

The total number of points possible is 30.

West Virginia Bureau for Medical Services (BMS) Personal Care Services Policy Manual Section 517.7.4 establishes the Service Level limits. The service limit for T1019 Personal Care (Direct Care) Level 1 Services is up to sixty (60) hours per calendar month. In the event that the PAS reflects fourteen (14) or more points as described in 517.19.3, and the member assessments fully document the need, the Personal Care Agency may request additional hours at Service Level 2.

<u>Service Level</u>	<u>Points Required</u>	<u>Range of Hours per Month</u>
1	Less than or equal to 13	Up to 60
2	14 – 30	61 – 210

### DISCUSSION

The Appellant was a recipient of Level 2 Personal Care Services based on the August 2017 PAS. On June 6, 2018, a PAS was completed by [REDACTED], RN with KEPRO, to determine the Appellant’s medical eligibility for continued PC services. On June 13, 2018, the Respondent issued a notice advising the Appellant that she was determined medically eligible to receive Level 1 PC services up to 60 hours per month. The Appellant requested a fair hearing to appeal the Respondent’s decision to decrease the Level of her PC services. The Appellant contended that additional service level points should have been awarded for the functional deficits of *bathing, transferring, walking, and wheeling*.

Service level points awarded on the PAS determine the level of PC services for which the Appellant is approved. In order to qualify for Level 1 service, total points from the PAS must range from 0 to 13. To qualify for Level 2 service, points must range from 14 to 30. The Respondent had to prove that the Appellant’s service level points were accurately awarded on the June 2018 PAS in the contested areas of *bathing, transferring, walking, and wheeling*. The Respondent had to demonstrate that service level points awarded on the June 2018 PAS equaled thirteen (13) points or less to establish the Appellant’s eligibility for Level 1 services.

### Bathing

RN [REDACTED] assessed the Appellant as a Level 2 functional ability for *bathing* on the June 2018 PAS, noting that the Appellant reported the ability to transfer in and out of the shower/tub with one-person assistance due to bilateral leg pain, weakness related to arthritis, and back pain related to disc disease and the need for assistance with bathing her back. The PAS indicated that the Appellant denied the use of a shower chair and reported that she was able to sit in the tub. At the hearing, the Appellant testified that she does not have a shower chair, but that she does utilize a shower bench. The Appellant's witness, [REDACTED], argued that the Appellant should have been awarded an additional service level point for *bathing*. Ms. [REDACTED] argued that the Appellant requires two-person assistance with bathing because the Appellant is unable to maintain her balance while on the shower bench or when she gets in or out of the shower/tub. The Appellant was assessed at a level 2 (requires physical assistance) for *bathing*. Evidence indicated that the Appellant was able to independently bathe herself, with the exception of her back. To be eligible for two (2) points in *bathing*, the Appellant had to demonstrate the need for total assistance with *bathing*. Because the Appellant was able to independently bathe herself with the exception of her back, she did not demonstrate the need for total assistance.

### Transferring

The Appellant was assessed as Level 3 (requires one-person assistance) for the functional ability of *transferring* on the June 2018 PAS and was awarded (2) service points. The PAS indicated that the Appellant demonstrated the ability to transfer with one-person assistance from the bed, toilet, and furniture. The Appellant reported that there are times her PCA is required to assist her from the couch due to back pain and bilateral leg weakness. The Appellant testified that she cannot stand to wash dishes or cook her meals. She stated that it is unable to do any household chores. The Appellant's witnesses testified that the Appellant is often home alone and does not always have someone available to assist her with transferring, so she remains in one position until someone is able to come to her home to assist her. Nurse [REDACTED] reported that during the assessment she observed the Appellant use her arms to push off of the table to a semi-standing position. The Appellant failed to prove that she needed two-person assistance in transferring.

### Walking

The Appellant was assessed at a Level 3 functional ability (one-person assistance) for *walking* on the 2018 PAS and was awarded two (2) service points. The Appellant reported the ability to walk with one or two-person assistance in addition to the use of her cane and walker. Ms. [REDACTED] testified that the Appellant has fallen four (4) times in the past year and that she requires hands on assistance of more than one person due to the frequency of her falls. The Appellant testified that when no one is present in her home, she stays in the bed or on the couch because she is not able to walk on her own at times. The Appellant stated that she is home alone before 1:00 pm and after 6:00 pm daily. The Appellant indicated that if she needs assistance outside of these hours she can call her witnesses who live between one and a half (1.5) to two miles (2) from her home. In order to qualify for an additional point in the functional area of *walking*, the Appellant is required to demonstrate the need for two-person assistance. Evidence failed to establish that the Appellant required more than one-person assistance with *walking*.

### Wheeling

The Appellant was assessed as Level 1, no wheelchair, for *wheeling* on the June 2018 PAS. Policy does not award any service level points for a Level 1 *wheeling* functional ability. To be awarded service level points for *wheeling*, the Appellant must be assessed at least a Level 3 functional ability. The June 2018 PAS reflected that the Appellant denied the use of manual or motorized wheelchair inside the home. The Appellant and her witnesses testified that she does use a wheelchair inside her home along with a cane and a walker. On cross-examination the Respondent requested that the Appellant clarify that her wheelchair was used primarily outside of her home and the Appellant agreed. Such a statement from the Appellant regarding the primary use of her wheelchair is outside of the home does not indicate that the wheelchair is not used within the home as well. The Appellant's witness, Ms. [REDACTED] testified that on the Appellant is unable to wheel independently and that she must be pushed. Ms. [REDACTED] testified that the day of the assessment, the Appellant's wheelchair was not in her home because it was loaded in the back of her vehicle. When Ms. [REDACTED] was questioned by the Respondent as to why she failed to attend the assessment to provide the information regarding the wheelchair usage, she indicated that she did not attend because an employee of personal care agency stated it was not necessary for her to be present. The evidence demonstrated that because the Appellant utilizes her wheelchair inside her home on occasion, she should have been awarded two (2) points for situational use of wheelchair within the home.

The Appellant was awarded thirteen (13) service level points on the June 2018 PAS. Based on the evidence presented in the hearing, the Appellant is awarded an additional two (2) service points for *wheeling*. With the additional two (2) points awarded for *wheeling*, the Appellant is assessed with a total of fifteen (15) service level points, which equates to Level 2 PCS services.

### CONCLUSIONS OF LAW

- 1) To receive Level 2 services under the Personal Care Service program, an individual must have a minimum of fourteen (14) points awarded on the PAS assessment.
- 2) The Appellant was awarded thirteen (13) points on the June 2018 PAS, approving her for Level 1 services.
- 3) Credible testimony held that the Appellant needs one-person assistance in *bathing, transferring, and walking*.
- 4) The Appellant utilizes her wheelchair inside her home in certain situations and policy establishes that situational use of wheelchair in the home equates to two (2) points.
- 5) The Appellant is awarded two (2) additional points for *wheeling*.
- 6) The Appellant's total of fifteen (15) service level points qualifies her for Level 2 Personal Care Services.

**DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny Level 2 Personal Care Services based on the Appellant's service level points obtained from the June 2018 PAS.

**ENTERED this \_\_\_\_\_ day of 2018.**

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**Danielle C. Jarrett**  
**State Hearing Officer**