



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh District DHHR
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

September 4, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:18-BOR-2027

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: 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-2027

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 August 21, 2018.

The matter before the Hearing Officer arises from the July 2, 2018, decision by the Respondent to deny Level 2 Services under the Personal Care 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 appeared *pro se*. Appearing as a witness for the Appellant was ██████████, her mother. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §517.13.5
- D-2 Personal Care Pre-Admission Screening dated June 25, 2018
- D-3 Personal Care Medical Necessity Evaluation Request dated April 18, 2018
- D-4 Personal Care Pre-Admission Screening dated June 26, 2017
- D-5 Personal Care Pre-Admission Screening Summaries dated June 16, 2015 and June 20, 2016
- D-6 Personal Care Services Member Assessment dated June 25, 2018
- D-7 Personal Care Services Registered Nurse Contact dated June 25, 2018 and Plan of Care for July 2018 through December 2018
- D-8 Notice of Decision dated July 2, 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 Personal Care services.
- 2) The Appellant underwent an annual medical assessment to determine continued eligibility for Personal Care services in June 2018.
- 3) The Pre-Admission Screening (PAS) was completed for the Appellant on June 25, 2018, which determined that the Appellant continued to meet the medical eligibility for the program (Exhibit D-2).
- 4) The Appellant was awarded twelve (12) service level points as derived from the PAS, which equates to Level 1 services (Exhibit D-2).
- 5) The Respondent notified the Appellant on July 2, 2018, that her request for Level 2 services had been denied.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §517.13.5 states an individual must have three deficits as described on the PAS form to qualify medically for the Personal Care Program. These deficits are derived from a combination of the following assessment elements on the PAS.

<u>Section</u>	<u>Observed Level</u>
#26	Functional abilities observed in the home
a)	Eating Level 2 or higher (physical assistance or more)
b)	Bathing Level 2 or higher (physical assistance or more)
c)	Dressing Level 2 or higher (physical assistance or more)
d)	Grooming Level 2 or higher (physical assistance or more)
e)	Continence, Level 3 or higher (must be incontinent)
	Bowel,
f)	Bladder
g)	Orientation Level 3 or higher (totally disoriented or comatose)
h)	Transferring Level 3 or higher (one-person or two-person assistance in the home)
i)	Walking Level 3 or higher (one-person or two-person assistance in the home)
j)	Wheeling Level 3 or higher (must be Level 3 or Level 4 on walking to use Level 3 or 4 for wheeling. Do not count outside of the home)

An individual may also qualify for Personal Care services if he or she has two functional deficits identified as listed above (items refer to PAS) and any one or more of the following conditions indicated on the PAS:

<u>Section</u>	<u>Observed Level</u>
#24	Decubitus, Stage 3 or 4
#25	In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) independently and b) with supervision are not considered deficits
#27	Individual has skilled needs in one or more of these areas: g) suctioning, h) tracheostomy, i) ventilator, k) parenteral fluids, l) sterile dressings or m) irrigations
#28	Individual is not capable of administering his/her own medications

Bureau for Medical Services Provider Manual §517.13.6 states there are two Service Levels for Personal Care services. Points will be determined as follows based on the following sections of the PAS:

<u>Section</u>	<u>Description of Points</u>
#24	Decubitus – 1 point
#25	1 point for b , c , or d (vacating in an emergency)
#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 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

Bureau for Medical Services Provider Manual §517.13.7 lists the Service Level limits as reflected on the PAS are:

<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

Policy stipulates that an individual’s service level under the Personal Care Services program is determined by the number of points derived from the PAS used to determine medical eligibility for services. The Appellant was awarded 12 points from the PAS, which equates to Level 1 services.

The Appellant’s mother and personal attendant, [REDACTED], gave testimony regarding the

functional areas of walking and wheeling for the Appellant.

Walking

Ms. █████ contended that the Appellant requires hands-on physical assistance with walking due to her unsteady gait and diagnosis of cerebral palsy. Ms. █████ testified that although the Appellant utilizes a walker to ambulate in the home, the walker could “tip over” with the Appellant and it is dangerous for her to ambulate without physical assistance.

The assessing nurse documented on the June 2018 PAS that she observed the Appellant ambulate with the use of her walker only, and that the Appellant and Ms. █████ denied the need for physical assistance in walking. The Plan of Care that was developed in June 2018 indicated that the Appellant required supervision only due to the use of the walker to ambulate. The Appellant was assessed as a Level 2 in walking (supervised/assistive device) in June 2018, however the Appellant received a Level 3 in walking (one person assistance) the previous three (3) years.

Wheeling

Ms. █████ testified that the Appellant uses a wheelchair in the home, and will use the wheelchair when she is feeling ill or tired. Ms. █████ purported that the Appellant requires total assistance in using the wheelchair.

Based on the testimony and documentation submitted, the Appellant was correctly assessed as a Level 2 in walking for her ability to walk without physical assistance but with the aid of a walker. Although the Appellant’s witness maintained that the Appellant requires physical assistance to walk, deference is given to the assessing nurse whose documentation made at the time of the June 2018 assessment of the Appellant’s abilities and denial for the need for physical assistance.

To receive a point for the area of wheeling, an individual must be assessed as a Level 3 or high in walking. The Appellant was assessed as a Level 2 in walking, therefore, points cannot be awarded in the area of wheeling.

Whereas no areas were identified wherein additional points could be derived, the Appellant was correctly awarded Level 2 services.

CONCLUSIONS OF LAW

- 1) To receive Level 2 services under the Personal Care Services program, an individual must have a minimum of fourteen (14) points awarded on the PAS assessment.
- 2) The Appellant was awarded twelve (12) points on the June 2018 PAS, approving her for Level 1 services, which was less than fourteen (14) points that are required for Level 2 services.
- 3) The documentation and testimony revealed that the Appellant was correctly assessed in the areas of walking and wheeling therefore no additional points can be awarded.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's request for Level 2 services under the Personal Care Services program.

ENTERED this 4th day of September 2018

**Kristi Logan
State Hearing Officer**