



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
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**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

February 8, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-3153

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-3153

**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 February 1, 2017, on an appeal filed December 9, 2016.

The matter before the Hearing Officer arises from the November 7, 2016 decision by the Respondent to decrease Appellant's level of care under the Medicaid Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, ██████████. The Appellant appeared *pro se*. Appearing as a witness for the Appellant were ██████████, case manager and ██████████, homemaker. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy Manual §§ 501.9.1.1 and 501.9.1.2
- D-2 Pre-Admission Screening (PAS), dated October 3, 2016
- D-3 Pre-Admission Screening (PAS), dated November 3, 2015
- D-4 Notice of Decision, dated November 7, 2016
- D-5 West Virginia Aged and Disabled Waiver Program Informed Consent and Release of Medical Information, dated November 4, 2016

Appellant's Exhibits:

- A-1 Physician note, dated December 8, 2016

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 benefits and services under the Medicaid Aged and Disabled (ADW) Waiver Program.
- 2) On November 3, 2015, the Appellant completed a Pre-Admission Screening (PAS), and it was noted she had cataracts and glaucoma. She was awarded two (2) points for vision. The total amount of points awarded on the PAS was 26. (D-3)
- 3) On November 4, 2015, the Department approved the Appellant for a Level of Care of D, with monthly service hours not to exceed 155 per month. (D-3)
- 4) On October 3, 2016, the Appellant completed a PAS and was noted to wear prescription glasses and was able to sign the consent form. She was not awarded points for vision. The total amount of points awarded was 24. (D-2)
- 5) Because the Appellant received no service level points for vision in October 2016, the Department approved the Appellant for a Level of Care of C, with monthly service hours not to exceed 124 per month. (D-4)
- 6) At the time of the October 3, 2016 PAS, the Department did not have verification that the Appellant had cataracts and glaucoma.
- 7) During the hearing, a copy of a note from the Appellant's physician was submitted which verified the Appellant has cataracts and glaucoma. (A-1)

APPLICABLE POLICY

Aged and Disabled Waiver Services Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) establish the Level of Care criteria. There are four (4) Service Levels for Personal Assistance/Homemaker services, and points are determined based on the following sections of the PAS:

- #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 equal to or greater than Level 3 before points are given 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

#34- Prognosis- 1 point if terminal

The total number of points allowable is 44.

SERVICE LEVEL LIMITS

Level A – 5 to 9 points – 0 to 62 hours per month

Level B – 10 to 17 points – 63 to 93 hours per month

Level C – 18 to 25 points – 94 to 124 hours per month

Level D – 26 to 44 points – 125 to 155 hours per month

DISCUSSION

On November 7, 2016, the Appellant was notified that her Level of Care decreased to a Level C. She was previously at a Level D. She requested a fair hearing, because she stated she still requires a Level D.

The Appellant's Level of Care decreased due to a loss of two (2) points for vision, which lowered her total amount of service level points to 24. On the 2015 PAS, the Appellant was observed to have glaucoma and cataracts. She also required larger print to read. Due to these issues, she was awarded two (2) points. On the 2016 PAS, it was noted that the Appellant wore prescription glasses and was able to sign the consent form without assistance. It was not addressed on the PAS if the Appellant still had glaucoma and cataracts.

The Appellant and her witnesses testified that the Appellant's conditions have not improved. They provided a note from the Appellant's physician that verified she still has glaucoma and cataracts. The note did not state whether the Appellant's conditions were improvable. This note was also sent to the Department prior to the hearing, but the Department was unaware that it was submitted. Even with verification from the Appellant's physician that the Appellant's conditions have not changed, the Department would not agree to reinstate the points for vision.

After reviewing the evidence submitted, the Appellant has the same conditions that made her eligible for a Level of Care of D as she did during the 2015 PAS. The Appellant should be awarded the same service points for vision as she previously had, bringing her total service level points to 26. According to the Aged and Disabled Waiver Services Policy Manual, the Appellant should receive a Level of Care of D, with monthly service hours not to exceed 155 per month.

CONCLUSION OF LAW

The Appellant is entitled to receive for two (2) points for vision, for a total of 26 service level points. This makes her eligible for Level of Care of D, with service monthly hours not to exceed 155 per month in the Aged and Disabled Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **reverse** the Department's decision to decrease the Appellant's Level of Care from D to C in the Aged and Disabled Waiver Program.

ENTERED this 8th Day of February 2017.

**Natasha Jemerison
State Hearing Officer**