



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
P.O. Box 1736
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Jolynn Marra
Inspector General

May 12, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1521

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 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, BoSS

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1521

**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 May 11, 2022, on an appeal filed April 5, 2022.

The matter before the Hearing Officer arises from the February 4, 2022 decision by the Respondent to reduce Level of Care service hours through the 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 Respondent was Joel Pitts, RN, KEPRO. The Appellant appeared pro se. Appearing as witnesses was ██████████, Resource Consultant, PPL. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Policy Manual Chapter § 501.11.2.1-501.11.2.2
- D-2 Pre-Admission Screening dated February 2, 2022
- D-3 Pre-Admission Screening Summary dated February 2, 2022
- D-4 Notice of Decision dated February 25, 2021
- D-5 Pre-Admission Screening Summary dated February 23, 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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On January 31, 2022, the Appellant was evaluated for continued eligibility for the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program (ADW PROGRAM) and to determine an appropriate level of care.
- 2) A Pre-Admission Screening (PAS) (Exhibit D-2) was completed with the Appellant to determine his functional abilities in the home.
- 3) The Appellant was awarded 17 total service level points as part of the PAS evaluation (Exhibit D-3).
- 4) The Respondent issued notice to the Appellant which advised him of his medical eligibility for the ADW program and that his service hours could not exceed a Level B determination or ninety-three (93) hours per month.
- 5) In 2021, the Appellant was approved at a Level C determination (Exhibit D-4) and awarded 20 total service level points. (Exhibit D-5)
- 6) A Level C service level range requires a minimum of 18 total points. (Exhibit D-1)
- 7) The Appellant and his representative contend that additional LOC service points should have been awarded in the areas of eating, dressing, grooming, transferring, and walking.
- 8) The Appellant does not require a Level 3 rating in the functional ability of eating.
- 9) The Appellant does not require a Level 3 rating in the functional ability of dressing.
- 10) The Appellant does not require a Level 3 rating in the functional ability of grooming.
- 11) The Appellant does not require a Level 3 rating in the functional ability of transferring.
- 12) The Appellant does not require a Level 4 rating in the functional ability of walking.

APPLICABLE POLICY

ADW Services Manual § 501.11.1 Medical Criteria documents that an individual must have five deficits as described on the PAS to qualify medically for the ADW program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Points	
#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	
#26	Functional abilities of individual in the home	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not
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. f.	Continence, Bowel Continence, Bladder	Level 3 or higher; must be incontinent
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	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 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)
#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	

ADW Services Manual, § 501.11.2.1, Service Level Criteria documents that 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.

ADW Services Manual, §501.11.2.2, Service Level Range of Hours documents:

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

The hours of service are determined by the service level and the Case Management and RN or PPL Assessment. Please note, the levels are a range of hours and are to be used to meet daily needs. Maximum hours are not guaranteed if the need is not identified. If the minimum hours awarded are not being utilized, the reason must be documented in the Service Plan. If a member reports formal Personal Attendant services to assist with ADLs are not needed, a request for closure must be submitted. For members new to Personal Options, the first month's budget must be prorated by the F/EA to reflect the actual start date of services.

DISCUSSION

Policy which governs the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program (ADW Program) establishes that a Level B service level is awarded when a recipient of ADW services is assessed between 10-17 points on the Pre-Admission Screening assessment tool. The Appellant appealed the Respondent's decision to reduce his level of care services hours from a Level C (monthly service hours of 94-124) to a Level B (monthly service hours of 63-93). The Respondent must show by a preponderance of the evidence that it correctly assessed the Appellant at a Level B service level.

On January 31, 2022, Joel Pitts, RN, KEPRO medically assessed the Appellant to determine his continued eligibility for the ADW program and determine an appropriate level of care. Based on information derived from the assessment, the Appellant was awarded 17 points, a Level B determination. The Appellant and his witness contend that additional points should have been awarded in the areas of eating, dressing, grooming, transferring, and walking.

Eating-During the PAS assessment, RN Pitts assessed the Appellant as a Level 2, requiring physical assistance in the contested area based on the Appellant's reported inability to cut food due based on his arthritic condition and carpal tunnel in his wrist. The Appellant and his witness testified that his carpal tunnel and arthritic condition inhibit his ability in the area of eating.

Testimony revealed that the Appellant requires physical assistance to eat but does not utilize any adaptive equipment to provide nourishment; therefore, the assessing nurse was correct in his determination and additional points cannot be awarded in the contested area.

Dressing-During the PAS assessment, RN Pitts assessed the Appellant as a Level 2, requiring physical assistance, based on the Appellant's report that he required physical assistance in the contested area due to arthritis pain, back pain, and shortness of breath. The Appellant and his witness testified that his inability to touch his shoulders due to arthritic pain and carpal tunnel affect his abilities. Testimony revealed that the Appellant required physical assistance for dressing; therefore, the assessing nurse was correct in his determination and additional points cannot be awarded in the contested area.

Grooming-During the assessment, RN Pitts assessed the Appellant as a Level 2, requiring physical assistance based on the Appellant's report that he required assistance with nail care and skin care due to arthritis pain, back pain, and shortness of breath. During the assessment, the Appellant denied needing assistance with hair care and oral care. The Appellant and his witness contend that additional points should be awarded due to the Appellant's inability to touch his shoulders due to his conditions. Evidence revealed that the Appellant requires physical assistance for grooming; therefore, the assessing nurse was correct in his determination and additional points cannot be awarded in the contested area.

Walking-During the assessment, RN Pitts assessed the Appellant as a Level 3, requiring one person assistance and awarded the Appellant two service level points toward his level of care. The Appellant provided testimony that he required assistance due to his physical condition. Evidence revealed that the Appellant requires physical assistance for walking; therefore, the assessing nurse was correct in his determination and additional points cannot be awarded in the contested area.

Transferring-During the assessment, RN Pitts assessed the Appellant as a Level 2, requiring supervision or an assistive device, based on the Appellant's report of his ability to transfer without hands on assistance from the bed, toilet, and furniture. RN Pitts noted in the assessment that the Appellant reported his "ability to transfer with pushing up off of furniture." The Appellant and his witness testified that he requires assistance in the contested area due to a recent back surgery (November 2021) from which he is still recovering and will require a future surgery on the same issue. Evidence revealed that the Appellant does not require physical assistance to aid in transferring; therefore, the assessing nurse was correct in his determination and additional points cannot be awarded in the contested area.

As a result of the hearing process, no additional points were awarded to the Appellant's Level of Care; therefore, the Respondent's decision to approve homemaker service hours not to exceed 93 hours per month (Level B service level) is affirmed.

CONCLUSIONS OF LAW

- 1) Policy provides that the number of points awarded on the Pre-Admission Screening assessment tool for documented medical conditions and functional abilities that require nursing services determine an individual's service level for the ADW Program.
- 2) The Appellant did not establish that additional points should have been awarded in the area of eating.
- 3) The Appellant did not establish that additional points should have been awarded in the area of grooming.
- 4) The Appellant did not establish that additional points should have been awarded in the area of dressing.
- 5) The Appellant did not establish that additional points should have been awarded in the area of walking.
- 6) The Appellant did not establish that additional points should have been awarded in the area of transferring.
- 7) The Appellant received a total of 17 service level points.
- 8) The Respondent was correct in its decision to award the Appellant a Level B service level.

DECISION

It is the decision of the State Hearing Officer to uphold the Respondents determination to reduce the Appellant's Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program to a Level B level of care.

ENTERED this _____ day of May 2022.

Eric L. Phillips
State Hearing Officer