



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

Bill J. Crouch
Cabinet Secretary

Board of Review
State Capitol Complex
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Telephone: (304) 352-0805 Fax: (304) 558-1992

Sheila Lee
Interim Inspector General

December 1, 2022

[REDACTED]

RE:

[REDACTED]-2088

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Administrative Hearing Decision
Form IG-BR-29

cc: Tamra Grueser, Department Representative

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

████████████████████,

Appellant,

v.

Action Number: 22-BOR-2088

**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 November 17, 2022, on an appeal filed September 6, 2022.

The matter before the Hearing Officer arises from the August 22, 2022 decision by the Respondent to reduce the Appellant's level of care in the Aged/Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN. Appearing as a witness for the Respondent was Rebecca Monroe, RN. The Appellant was self-represented. Appearing as a witness for the Appellant was her daughter, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibit:

- | | |
|-----|--|
| D-1 | BMS Provider Manual, Chapter 501 Aged and Disabled Waiver (ADW), §§ 501.11 – 501.11.2.2; Medical Necessity Evaluation Request form; Notice of decision, dated August 22, 2022; Pre-Admission Screening (PAS) form, dated July 29, 2022; PAS Summary form, dated July 29, 2022; PAS Summary forms, dated August 16, 2022 (3); Additional medical documentation regarding the Appellant, received August 16, 2022; Aged and Disabled Waiver – Case Management Assessment, dated March 9, 2022*; Medication list, dated July 29, 2022 |
|-----|--|

Appellant's Exhibit:

A-1 [REDACTED] Progress Notes, regarding an October 14, 2022 office visit with the Appellant

***pp. 40 – 52 of the Department's exhibit included documentation from an unrelated case. Because this exhibit was admitted, the identifying information from these pages was redacted and not relied upon in this decision.**

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 participant in the Aged/Disabled Waiver (ADW) Program.
- 2) An assessment of the Appellant's medical necessity for ADW services was conducted on July 29, 2022. (Exhibit D-1, pp. 9 – 19 of 53)
- 3) Additional medical information was provided to the Respondent for review on August 16, 2022. (Exhibit D-1, p. 24 of 53)
- 4) By notice dated August 22, 2022, the Respondent advised the Appellant that she was "...determined medically eligible to continue to receive Waiver services." (Exhibit D-1, pp. 4 – 8 of 53)
- 5) This notice (Exhibit D-1, pp. 4 – 8 of 53) specified the level of care of ADW services, and stated, in pertinent part, "The number of homemaker service hours approved is based on your medical needs and cannot exceed 124 hours per month."
- 6) The Appellant's ADW service level was established at Level C (Exhibit D-1, pp. 20 – 23 of 53) based on a total of 23 points on the 2022 evaluation.
- 7) The Appellant disputed the Respondent's assessment of the areas of *communication* and *vision*.
- 8) During the 2022 assessment of the Appellant's functional abilities, the Appellant was not awarded points in the area of *communication*. (Exhibit D-1, pp. 20 – 23 of 53)
- 9) During the 2022 assessment of the Appellant's functional abilities, the Appellant was not awarded points in the area of *vision*. (Exhibit D-1, pp. 20 – 23 of 53)

- 10) The Respondent’s assessing nurse noted the Appellant’s in-home functional ability in the area of *communication* as *Level 2 – Impaired/Understandable*, on the 2022 PAS. (Exhibit D-1, p.14 of 53)
- 11) The Respondent’s assessing nurse noted the Appellant’s in-home functional ability in the area of *vision* as *Level 2 – Impaired/Correctable*, on the 2022 PAS. (Exhibit D-1, p.14 of 53)
- 12) The Respondent’s assessing nurse made notes describing the Appellant’s functional ability in the home as part of the 2022 PAS (Exhibit D-1, p.16 of 53) and described the Appellant’s functional ability in the area of *communication* as, “Speech was clear, understandable, and appropriate. Member slurred a few words during the assessment, but was understandable. Member completed the majority of the PAS.”
- 13) The Respondent’s assessing nurse made notes describing the Appellant’s functional ability in the home as part of the 2022 PAS (Exhibit D-1, p.15 of 53) and described the Appellant’s functional ability in the area of *vision* as, “Member has an old pair of prescription glasses, does not use magnifiers. Member reports able to see ok with the glasses on, but has difficulty with smaller print. Daughter reports getting ready to pick up new glasses in the next 2 weeks. Last exam: 7/18/2022.”
- 14) The Appellant provided documentation of her office visit (Exhibit A-1) to [REDACTED] on October 14, 2022.
- 15) This document (Exhibit A-1) provided progress notes from [REDACTED], nurse practitioner, which partly address the area of communication, and read, “...Patient does slur the speech and is very limited on talking...”
- 16) The document (Exhibit A-1) did not provide information regarding the area of *vision*.
- 17) The Appellant is a Level 2 in the functional area of *communication*.
- 18) The Appellant is a Level 2 in the functional area of *vision*.

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 Person-Centered 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

The Appellant has appealed the Respondent’s decision to reduce her level of care in the ADW Program. The Appellant was awarded a level of care C, which was a reduction from a prior Level D. The Respondent must show by a preponderance of the evidence that it correctly assessed the Appellant at Level C.

The Appellant disputed the Respondent’s findings in two areas of the PAS assessment – the in-home functional abilities in *communication* and *vision*. The Appellant was assessed at Level 2 in both areas, and this assessment results in no points awarded per policy. To obtain points in these areas, the Appellant must establish a Level 3 or 4.

The Respondent’s assessing nurse made notes at the time of the assessment indicating she was impaired, but understandable – which corresponds to a Level 2 in the area of *communication*, resulting in no service level points. Testimony from the Appellant’s daughter indicated the Appellant’s ability to communicate varies, but when it is bad, she cannot be understood. When asked to estimate how often the Appellant’s communication was unclear at the time of the July 2022 PAS assessment, the Appellant’s daughter indicated it was approximately ‘a week’s worth’ of a month. There was documentation of a doctor’s office visit (Exhibit A-1) in which it was noted the Appellant’s speech was slurred, but this office visit was significantly after the July 2022 assessment and is given less weight for this reason. Although it is apparent from evidence and testimony that the Appellant’s functional ability in *communication* has declined since July 2022, the Respondent correctly assessed the Appellant in this area. At the time of the July 2022 assessment, the Appellant’s speech was understandable most of the time, with no noted use of communication aids or inappropriate speech.

The Respondent correctly assessed the Appellant in the area of *vision*. The Appellant's documentation did not address this area, and the Respondent's PAS document noted the Appellant's vision was correctable with glasses. Testimony from the Appellant's daughter contended that the Appellant could get glasses but did not because the prescription could change. The reason provided for not filling the Appellant's prescription does not change the assessed level. The Respondent was correct to assess the Appellant as a Level 2 – or impaired, but correctable – in the area of *vision*.

With no additional service level points revealed through evidence and testimony, the Appellant did not establish a higher service level (Level D) for the ADW Program. The Respondent correctly determined the Appellant's ADW service level at Level C.

CONCLUSION OF LAW

Because the Appellant was correctly determined to have 23 service level points on a July 2022 evaluation of her medical needs, the Respondent correctly established the Appellant's ADW service level at Level C.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to establish the Appellant's Aged/Disabled Waiver services at a Level C.

ENTERED this ____ Day of December 2022.

Todd Thornton
State Hearing Officer