



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Inspector General

March 23, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1277

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

Cc Tamra Grueser, WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 22-BOR-1277**

**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 March 22, 2022, on an appeal filed February 8, 2022.

The matter before the Hearing Officer arises from the January 26, 2022 decision by the Respondent to decrease the Appellant's Level of Care under the Aged/Disabled Waiver Medicaid Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services, WVDHHR. Appearing as a witness for the Respondent was Debbie Sickles, RN, KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Appellant's friend/care provider, ██████████, and ██████████ RN, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Aged/Disabled Waiver Policy Chapters 501.11.1, 501.11.2.1 and 501.11.2.2
- D-2 Pre-Admission Screening (PAS) dated January 24, 2022
- D-3 PAS Summary dated January 24, 2022
- D-4 Notice of Decision dated January 26, 2022
- D-5 Notice of Decision dated June 10, 2020
- D-6 Medical Necessity Evaluation Request signed on May 10, 2021
- D-7 Medical Necessity Evaluation Request signed on May 10, 2021
- D-8 PAS Summary dated June 9, 2020

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 Aged/Disabled Waiver Medicaid benefits.
- 2) The Appellant previously qualified for a Level C Level of Care under the Aged/Disabled Waiver Program as the result of a Pre-Admission Screening (PAS) completed on June 9, 2020 (Exhibit D-8).
- 3) The Appellant received 19 service level points on the June 2020 PAS, which equates to Level of Care C (Exhibit D-8).
- 4) A new PAS was completed for the Appellant on January 24, 2022 in conjunction with her annual assessment (Exhibits D-2 and D-3).
- 5) The Appellant received 17 service level points on the January 2022 PAS, which equates to Level of Care B (Exhibits D-2 and D-3).
- 6) The Appellant was notified of the Level of Care decrease in a Notice of Decision dated January 26, 2022 (Exhibit D-4).

### **APPLICABLE POLICY**

Aged and Disabled Waiver Manual Policy Chapters 501.11.2.1 and 501.11.2.2 (D-1) set forth the Service Level criteria.

There are four service levels for personal attendant services. Points will be determined as follows based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points)
- #24- Decubitis- 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

#35- Prognosis- 1 point if terminal

The total number of points possible is 44.

#### **501.11.2.2 Service Level Range of Hours**

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

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

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

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

### **DISCUSSION**

Aged/Disabled Waiver Medicaid Policy states that to be assessed at a Level C Level of Care, an individual must receive at least 18 points on the PAS assessment. The Appellant was evaluated at a Level B Level of Care after receiving 17 points during a PAS completed in January 2022.

During the hearing, the Appellant's friend/care provider, [REDACTED], testified that the Appellant has been diagnosed with arthritis and her physician provided written verification of the arthritis diagnosis on March 11, 2022. The verification was not submitted as evidence for the hearing and was not available to assessing nurse Debbie Sickles at the time of the PAS. [REDACTED] also testified that the Appellant received service level points for her vision problems on the June 2020 PAS. Ms. Sickles testified that the Appellant reported having cataracts removed in 2021 and reported no blurriness or foggy vision since the surgery. The Appellant had reported that she could see well enough to watch television and that she is able to see clearly when walking through her home. Therefore, no service level points were awarded for vision during the 2022 PAS. Tamra Grueser, Registered Nurse with the Bureau of Senior Services, testified that the Appellant's case management agency could provide verification of the arthritis diagnosis to the Bureau for consideration.

As the assessing nurse had no verification of an arthritis diagnosis during the January 2022 PAS, no additional point can be awarded for that diagnosis. The Appellant reported the ability to see clearly when walking in her home during the PAS assessment; therefore, no additional service points can be awarded for vision.

### **CONCLUSIONS OF LAW**

- 1) To attain a Level C Level of Care under the Aged/ Disabled Waiver Medicaid Program, an individual must receive at least 18 points on the PAS assessment.
- 2) The Appellant received 17 points on her January 2022 PAS assessment, which equates to a Level B Level of Care.
- 3) Based on information/documentation provided during the hearing, no additional points can be awarded to the Appellant.

- 4) The Appellant has not met criteria for a Level C Level of Care.
- 5) The Respondent's decision to decrease the Appellant's Level of Care is affirmed.

**DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to decrease the Appellant's Level of Care under the Aged/Disabled Waiver Medicaid Program.

**ENTERED this 23rd Day of March 2022.**

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**Pamela L. Hinzman  
State Hearing Officer**