



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661**

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

October 4, 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1872

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Tamra R. Grueser, RN, WV Bureau of Senior Services

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

██████████,

Appellant,

v.

ACTION NO.: 16-BOR-1872

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on October 4, 2016, on an appeal filed May 10, 2016. This hearing originally was scheduled for July 27, 2016, but was rescheduled at the request of the Appellant.

The matter before the Hearing Officer arises from the April 27, 2016, decision by the Respondent to reduce the Appellant's monthly service hours in the Title XIX Aged and Disabled Waiver (ADW) Program from 124 hours per month to 93 hours per month.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services. Appearing as a witness for the Department was Tara Hatfield, RN, of KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████ of ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Manual Policy §§ 501.9.1.1 and 501.9.1.2
- D-2 Pre-Admission Screening (PAS) completed on April 26, 2016
- D-3 Pre-Admission Screening (PAS) completed on March 25, 2015
- D-4 Notice of Decision dated April 9, 2015
- D-5 Notice of Decision dated April 27, 2016
- D-6 ADW Medical Necessity Evaluation Request, dated March 7, 2016

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) A nurse from KEPRO conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver (ADW) Program with the Appellant on April 26, 2016 (Exhibit D-2). The nurse assessed the Appellant with a total of seventeen (17) Level of Care points on the PAS.
- 2) The Department approved the Appellant for a Level of Care of B, with monthly service hours not to exceed 93 per month.
- 3) Before the April 2016 PAS, the Appellant received her services at a Level of Care of C, with monthly service hours not to exceed 124 per month (Exhibit D-3). The Appellant requested a hearing to protest the reduction of her Level of Care from Level C to Level B.
- 4) During the hearing, the Appellant and her witness conceded that the nurse from KEPRO conducted the PAS correctly and no additional Level of Care points should be added to the April 2016 PAS.
- 5) Since no additional Level of Care points will be added to the Appellant's April 2016 PAS, her Level of Care in the ADW program will remain at Level B.

APPLICABLE POLICY

Aged and Disabled Home and Community-Based Services Waiver 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

The Appellant and her witness conceded that the nurse who conducted the April 2016 PAS correctly assessed the Appellant with seventeen (17) Level of Care points. The Appellant should receive a Level of Care of B in the Aged and Disabled Waiver Program, with service hours not to exceed 93 per month.

CONCLUSION OF LAW

The Department assessed the Appellant with seventeen (17) Level of Care points on the PAS conducted on April 26, 2016. The Appellant did not dispute that the Department's assessment was correct. The Appellant qualifies for a Level of Care of B in the Aged and Disabled Waiver Program, as defined in BMS Provider Manual §501.5.1.1(a) and (b).

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to reduce the Appellant's Level of Care from C to B in the Aged and Disabled Waiver Program.

ENTERED this 4th Day of October 2016.

Stephen M. Baisden
State Hearing Officer