



**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**

November 1, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2426

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
[REDACTED]

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

██████████,

Appellant,

v.

ACTION NO.: 16-BOR-2426

**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 November 1, 2016, on an appeal filed August 5, 2016. This hearing originally was scheduled for September 27, 2016, but was rescheduled at the request of the Appellant.

The matter before the Hearing Officer arises from the July 22, 2016, decision by the Respondent to assess the Appellant as requiring 124 monthly service hours in the Title XIX Aged and Disabled Waiver (ADW) Program, a Level of Care of C.

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*, by her representative and niece ██████████. 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 July 20, 2016
- D-3 Pre-Admission Screening (PAS) completed on June 24, 2015
- D-4 Pre-Admission Screening (PAS) completed on July 29, 2014
- D-5 Notice of Decision dated July 22, 2016
- D-6 Service Level Change Request notification, dated September 15, 2016
- D-7 Admission Nursing Assessment from ██████████, dated September 29, 2016

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 July 20, 2016 (Exhibit D-2). The nurse assessed the Appellant with a total of twenty-one (21) Level of Care points on the PAS.
- 2) The Department approved the Appellant for a Level of Care of C, with monthly service hours not to exceed 124 per month. The Department informed the Appellant of the results of her Level of Care evaluation on July 22, 2016 (Exhibit D-5).
- 3) The Appellant requested a Service Level Change, due to deterioration in her health status. On September 15, 2016, the Department assessed the Appellant with twenty-four (24) Level of Care points (Exhibit D-6). This was not sufficient to raise the Appellant's Level of Care to D.
- 4) The Appellant requested a fair hearing to protest the Level of Care of C.
- 5) During the hearing, the Department submitted into evidence documentation from [REDACTED] (Exhibit D-7). The Appellant's representative argued that the documentation is sufficient to award additional Level of Care points for angina (1 point), dysphagia (1 point), decubitus (1 point), orientation at level 3 (2 points), the professional and/or technical need of continuous oxygen (1 point) and a terminal prognosis (1 point).
- 6) The Department's representative did not oppose awarding these points to the Appellant.

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 received twenty-one (21) Level of Care points on her July 20, 2016 PAS. She requested a Level of Care reevaluation. On September 15, 2016, she learned that three (3) additional Level of Care points would be awarded to her, but this only brought her Level of Care point total to twenty-four (24), not enough to raise her Level of Care to Level D.

The Appellant, through her representative, referred to documentation from [REDACTED] (Exhibit D-7), to argue that she should have been awarded Level of Care points for angina at rest (1 point), dysphagia (1 point), decubitus (1 point), orientation at level 3 (2 points), professional and technical needs of continuous oxygen (1 point) and a terminal prognosis (1 point).

The Department's representative testified that the assessing nurse conducted the July 20, 2016 PAS accurately. However, she stated, she recognized the fact that the Appellant's medical health status declined dramatically since the PAS was completed. She did not oppose the awarding of the above-listed Level of Care points to the Appellant, bringing her Level of Care total to thirty-one (31).

According to Aged and Disabled Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b), the Appellant should receive a Level of Care of D in the Aged and Disabled Waiver Program, with service hours not to exceed 155 per month.

CONCLUSION OF LAW

The Department assessed the Appellant with twenty-one (21) Level of Care points on the PAS conducted on July 20, 2016, and added an additional three (3) points after a Service Level

Change request. The Appellant provided documentation that additional seven (7) points should be awarded to her, bringing her total to thirty-one (31) points. The Department did not dispute adding these points. The Appellant qualifies for a Level of Care of D 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 REVERSE the Department's proposal not to increase the Appellant's Level of Care from C to D in the Aged and Disabled Waiver Program.

ENTERED this 1st Day of November 2016.

Stephen M. Baisden
State Hearing Officer