



**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**

March 9, 2016



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3581

Dear Ms. [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.: 15-BOR-3581

**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 March 8, 2016, on an appeal filed November 23, 2015. This hearing originally was scheduled for January 26, 2016, but was rescheduled at the request of the Appellant.

The matter before the Hearing Officer arises from the October 29, 2015, 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. The Appellant appeared *pro se*, by her representative and brother ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

None

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 APS Healthcare conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver (ADW) Program with the Appellant on October 28, 2015. 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. Before the October 2015 PAS, the Appellant received her services at a Level of Care of C, with monthly service hours not to exceed 124 per month. The Appellant requested a fair hearing to protest the reduction of her Level of Care from Level C to Level B.
- 3) During the hearing, the Department's representative conceded that the Appellant should have received two (2) additional Level of Care points on the October 2015 PAS, for the functional ability of continence of bowel and for administering medications.
- 4) The addition of two Level of Care points raised the Appellant's total points on the October 2015 PAS to nineteen (19), which is sufficient for a Level of Care of C.

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 Department's representative conceded that the nurse who conducted the October 2015 PAS should have assessed the Appellant with two additional Level of Care points. The Appellant should receive a Level of Care of C in the Aged and Disabled Waiver Program, with service hours not to exceed 124 per month.

CONCLUSION OF LAW

The Department assessed the Appellant with seventeen (17) Level of Care points on the PAS conducted on October 28, 2015. The Department's representative conceded that the Appellant should have received two (2) additional Level of Care points. The Appellant qualifies for a Level of Care of C 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 to reduce the Appellant's Level of Care from C to B in the Aged and Disabled Waiver Program.

ENTERED this 9th Day of March 2016.

Stephen M. Baisden
State Hearing Officer