



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
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Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

June 21, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1716

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services

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

██████████,

Appellant,

v.

Action Number: 17-BOR-1716

**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 June 13, 2017, on an appeal filed April 24, 2017.

The matter before the Hearing Officer arises from the March 3, 2017 decision by the Respondent to decrease Appellant's level of care under the Medicaid Aged and Disabled Waiver Program.

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

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy Manual §§ 501.9.1.1 and 501.9.1.2
- D-2 Notice of Decision, dated March 3, 2017 and Pre-Admission Screening (PAS), dated March 1, 2017
- D-3 Notice of Decision, dated January 20, 2016 and Pre-Admission Screening (PAS), dated January 18, 2016
- D-4 Notice of Decision, dated February 6, 2015 and Pre-Admission Screening (PAS), dated January 28, 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) The Appellant is a recipient of benefits and services under the Medicaid Aged and Disabled (ADW) Waiver Program.
- 2) On January 18, 2016, the Appellant completed a Pre-Admission Screening (PAS). She was awarded a total of 26 points. (D-3)
- 3) On January 20, 2016, the Department approved the Appellant for a Level of Care of D, with monthly service hours not to exceed 155 per month. (D-3)
- 4) On March 1, 2017, the Appellant completed a PAS and was awarded a total of 22 points. The Appellant had a reduction in service level points in the areas of bathing, dressing, grooming, and dysphagia. (D-2)
- 5) On March 3, 2017. The Appellant was notified that she was decreased to a Level of Care of C, due to the reduction of service level points. (D-2)
- 6) The Appellant was not diagnosed with dysphagia. (D-2)

APPLICABLE POLICY

Aged and Disabled Waiver Services 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

On March 3, 2017, the Appellant was notified that her Level of Care decreased to a Level C. She was previously at a Level D. She requested a fair hearing because she stated she still requires a Level of Care of D.

To be eligible for a Level of Care of D, recipients must receive 26 to 44 service level points on the Pre-Admission Screening (PAS). Medical conditions listed on the PAS are based on the ADW Medical Necessity Evaluation Request form completed by the recipient's physician or by medication prescribed to the recipient.

The Appellant's Level of Care decreased due to a loss of four (4) service level points, which reduced her total amount of service level points to 22. From the 2016 PAS to the 2017 PAS, the Appellant lost one (1) point in each of the following areas: bathing, dressing, grooming, and dysphagia. The Department's witness, [REDACTED], testified that the Appellant stated on the PAS that she was able to wash 50% of her body on her own, pull her pants up to her knees, cut her nails on her left hand, and brush her teeth. She stated the Appellant was not diagnosed with dysphagia, and it was possible that she was awarded a service level point for dysphagia in the past in error.

The Appellant's sister and caregiver, [REDACTED], indicated the Appellant has not had an improvement in the areas of bathing, dressing, or grooming. She stated the Appellant now requires more assistance due to limited use of her right hand. She stated the Appellant can no longer wash 50% of her body without assistance. She also added that at times, the Appellant cannot pull her pants up to her knees and normally requires total assistance. She added that the Appellant can at times brush her teeth, but requires assistance with the toothpaste. [REDACTED] stated that the Appellant choked on her food two (2) times, but she agreed with the Department that the Appellant has not been diagnosed with dysphagia.

After reviewing the evidence submitted, the Appellant has the same conditions that made her eligible for additional service level points for bathing, dressing, and grooming. The 2017 PAS did not indicate the Appellant had an improvement in those areas. She still required the same amount of assistance, and according to testimony provided by the Appellant's witness, the

Appellant now requires additional assistance. The Appellant should be awarded the same service points for bathing, dressing, and grooming that she previously had. However, evidence and testimony provided did not show the Appellant should be awarded a point for dysphasia. According to the Aged and Disabled Waiver Services Policy Manual, the Appellant should receive a Level of Care of C.

CONCLUSIONS OF LAW

- 1) Because the Appellant has not been diagnosed with dysphagia by a physician, she is not eligible for a service level point in that area.
- 2) The Appellant is eligible for an additional service level point in the areas of bathing, dressing, and grooming, bringing her total amount of points to 25 and making her eligible for a Level of Care of C.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to decrease the Appellant's Level of Care from D to C in the Aged and Disabled Waiver Program.

ENTERED this 21st Day of June 2017.

**Natasha Jemerison
State Hearing Officer**