



**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  
Interim Inspector General**

August 16, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-2010

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,

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

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

cc: Tammy Grueser, BoSS

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

██████████,

**Appellant,**

**v.**

**Action Number: 19-BOR-2010**

**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 August 15, 2019, on an appeal filed July 11, 2019.

The matter before the Hearing Officer arises from the June 25, 2019 decision by the Respondent to decrease the Appellant's homemaker service hours under the Aged and Disabled Waiver Medicaid Program.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Mary Jo Sermo, RN, Aged/Disabled Waiver Clinical Assessor, KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, personal attendant, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1           Aged and Disabled Waiver Services Policy Manual Sections 501.9, 501.9.1.1 and 501.9.1.2
- D-2           Notice of Decision dated June 25, 2019
- D-3           Pre-Admission Screening (PAS) completed on June 24, 2019, Medication List, PAS Summary and Medical Necessity Evaluation Request
- D-4           PAS completed on June 11, 2018, Medication List, PAS Summary and Medical Necessity Evaluation Request
- D-5           Aged and Disabled Waiver- Service Plan
- D-6           Aged and Disabled Waiver-Person Centered Assessment

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 and Disabled Waiver Medicaid benefits.
- 2) The Appellant previously qualified for a Level D Level of Care under the Aged and Disabled Waiver Medicaid Program as the result of a Pre-Admission Screening (PAS) assessment completed on June 11, 2018 (D-4).
- 3) The Appellant's functional abilities in her home were reevaluated on June 24, 2019 in conjunction with her annual PAS assessment. At that time, the Appellant received 25 total PAS points (D-3).
- 4) On June 25, 2019, the Respondent issued notice (D-2) to the Appellant, informing her of its proposal to decrease her homemaker service hours from Level D to Level C as a result of the June 24, 2019 PAS assessment.

## **APPLICABLE POLICY**

Aged and Disabled Waiver Manual Policy Sections 501.9.1.1 and 501.9.1.2 (D-1) set forth the Service Level criteria:

- #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
- #34- Prognosis- 1 point if terminal

The total number of points allowable is 44.

### **LEVELS OF CARE SERVICE LIMITS**

- 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 and Disabled Waiver Medicaid Policy states that to receive a Level D Level of Care, an individual must receive at least 26 points on the PAS assessment. The Appellant was evaluated at a Level C Level of Services as the result of a PAS completed in June 2019.

During the hearing, the Appellant indicated that she needs assistance with grooming, but can wash her face. Therefore, the PAS assessment finding of physical assistance with grooming is correct.

The Appellant testified that she is unable to dress without assistance. PAS notes state that the Appellant requires assistance with dressing “both her upper and lower body including snapping, buttoning and zipping and placing socks and shoes.” On the date of the assessment, the Appellant stated that her homemaker “will help assist her by placing her pants around her ankles and pulling them up to her waist.” The Appellant reported that her homemaker would “place her shirt over her head and she will slide her arms through the sleeves of her shirt.” PAS notes state that the Appellant tries to wear slip-on shoes as she “is unable to reach her feet and she has trouble with tying of shoes due to pain and impaired mobility in back and hands.” The Appellant testified that she has difficulty raising her arms to assist in putting on her shirts due to back pain. She stated that she is unable to fasten her pants once her personal attendant pulls them up to her waist. An Aged and Disabled Waiver Service Plan for the period of April 2019 to October 2019 (D-5) states that the Appellant receives total care with dressing from her personal attendant. An Aged and Disabled Waiver-Person Centered Assessment dated April 24, 2019 (D-6) states that the Appellant requires assistance with all upper and lower body dressing. She requires assistance with all fasteners, as well as her socks and shoes.

As the Appellant provided credible testimony that she has difficulty raising her arms to help put them in shirt sleeves due to back problems – and her Plan of Care states that she requires total assistance in dressing - one (1) additional point is awarded for total care in the functional area of dressing.

## **CONCLUSIONS OF LAW**

- 1) In order to receive a Level D Level of Care under the Aged and Disabled Waiver Medicaid Program, an individual must receive at least 26 points on the PAS assessment.
- 2) The Appellant received 25 points on her June 2019 PAS assessment, which equates to a Level C Level of Care.
- 3) As a result of information provided during the hearing, one (1) additional point is awarded to the Appellant in the area of total assistance with dressing, bringing her total number of PAS points to 26.
- 4) The Appellant has met the criteria for a Level D Level of Care.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Respondent's proposal to decrease the Appellant's homemaker service hours through the Aged and Disabled Waiver Medicaid Program.

**ENTERED this 16th Day of August 2019**

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**Pamela L. Hinzman  
State Hearing Officer**