



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
Board of Review  
PO Box 1247  
433 Mid Atlantic Parkway  
Martinsburg, West Virginia 25402**

**Bill J. Crouch  
Cabinet Secretary**

**Jolynn Marra  
Interim Inspector General**

October 17, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 19-BOR-2060

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,

Lori Woodward, State Hearing Official  
Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS

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

[REDACTED],  
**Appellant,**

**v.**

**Action Number: 19-BOR-2060**

**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 [REDACTED]. 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 October 9, 2019, on a timely appeal filed July 24, 2019.

The matter before the Hearing Officer arises from the July 10, 2019 proposal of the Respondent to decrease the Appellant's Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program service level.

At the hearing the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Cindy Rea, RN, KEPRO. The Appellant, who was present for the hearing, was represented by [REDACTED], her niece. Appearing as witnesses for the Appellant were [REDACTED], RN, and [REDACTED], RN, both with Aging & Family Services. Observing but not participating was Tara Hatfield, RN, KEPRO. All witnesses were sworn, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 West Virginia Medicaid Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.9 – 501.9.1.2
- D-2 Pre-Admission Screening (PAS) form, dated July 9, 2019
- D-3 PAS Summary, dated July 10, 2019; PAS Summary, dated June 18, 2018
- D-4 Notice of Decision Re-Evaluation Assessment - Approved, dated July 11, 2019
- D-5 Aged and Disabled Waiver - Person Centered Assessment, dated May 7, 2019; Medication List
- D-6 Aged and Disabled Waiver – Service Plan, dated May 7, 2019
- D-7 Medical Necessity Evaluation Request (MNER), dated May 6, 2019

**Appellant's Exhibits:**

A-1 Office Visit notes from July 15, 2019, signed by Dr. [REDACTED]

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) On July 9, 2019, the Appellant was evaluated to determine continued medical eligibility for the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program (ADW Program) and to assign the appropriate level of care. Cindy Rea, RN with KEPRO, completed a Pre-Admission Screening (PAS) form with the Appellant to assess her functional abilities in the home. (Exhibit D-2)
- 2) As a result of her evaluation, RN Rea assessed the Appellant with 20 level of care points based on her observations and the information derived from the medical evaluation. (Exhibits D-2 and D-3)
- 3) On July 11, 2019, the Respondent issued a notice to the Appellant of its decision to approve homemaker service hours not to exceed 124 hours per month, which is considered a Level C service level, as a result of the assessment by RN Rea. (Exhibit D-4)
- 4) The Appellant previously received 27 level of care points on her 2018 PAS, which qualified as Level D services. (Exhibit D-3)
- 5) A total of at least 26 points are required for the Appellant to receive services at a Level D. (Exhibit D-1)
- 6) The Appellant's representative averred that the Appellant should have received additional points in the areas of *bathing, grooming, dressing, transferring, walking*, and for the medical condition/symptom of *dysphagia*.
- 7) The Appellant was evaluated as a Level 2 in the contested areas of functional ability.
- 8) The Appellant had the medical condition/symptom of dysphagia at the time of her July 2019 PAS assessment. (Exhibits D-3 and A-1)

**APPLICABLE POLICY**

Chapter 501 of the ADW Services Manual, at §§501.9.1.1, provides the applicable policy regarding the point system and corresponding program service levels. This policy reads:

### 501.9.1.1 Service Level Criteria

There are four Service Levels for Personal Attendant services. Points will be determined as follows based on the following sections of the PAS:

Section	Description of Points
#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 at Level 3 or Level 4 in order to get points 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
#35	Prognosis – 1 point if Terminal

Total number of points possible is 44.

### 501.9.1.2 Service Level Limits

#### Traditional Service Levels

Level	Points Required	Range of Hours Per Month (for Traditional)
A	5-9	0 – 62
B	10-17	63 – 93
C	18-25	94 – 124
D	26-44	125 – 155

The hours of service are determined by the service level and the Person-Centered Assessment. Please note, the levels are a range of hours and are to be used to meet daily needs. Maximum hours are not guaranteed if the need is not identified. If the minimum hours awarded are not being utilized, the reason must be documented in the Service Plan. If a person reports formal Personal Attendant services to assist with ADLs are not needed, a request for closure must be submitted.

## **DISCUSSION**

The Appellant underwent a PAS review in July 2019. The reviewing nurse, Cindy Rea, assessed the Appellant with 20 service level points based on her observations and the information derived from the medical evaluation. Twenty service level points equates to Level C (service limit of 94 – 124 hours per month) services. In order to rise from a Level C to a Level D service level, the Appellant needed to have at least six (6) additional points awarded. Previously, the Appellant was awarded 27 service level points on her June 2018 PAS, which equaled a Level D service level.

The Appellant's representative, [REDACTED], averred that the Appellant should have been awarded additional points in the functional abilities in bathing, dressing, grooming, transferring and walking, and for the medical condition/symptom of dysphagia. The Appellant received a Level 2 in the contested functional areas. In order to receive an additional point in the areas of bathing, dressing and grooming the Appellant must show a need for total care/assistance, or at least a Level 3 level of care. To be awarded a deficit in the areas of transferring and walking, the Appellant must require at least a Level 3 - two-person assist.

On the July 2019 PAS assessment, RN Rea noted the Appellant was unable to fully extend her arms above her head, however, she was able to touch the top of her head, her shoulders and face, and was able to bend at the waist while seated and touch her feet with her hands and touch her posterior hips. RN Rea documented that the Appellant does not require total care in the areas of bathing, dressing or grooming. The Appellant required physical assistance in these areas. On the May 7, 2019 ADW Person Centered Assessment and Service Plan (hereinafter referred to as "Service Plan"), RNs [REDACTED] and [REDACTED] documented that the Appellant required partial assistance in these contested areas. The testimony and documentation showed that the Appellant required partial assistance in the contested functional areas of bathing, grooming and dressing. The Respondent correctly assessed the Appellant at a Level 2 in these areas.

During the July 2019 PAS evaluation, RN Rea observed the Appellant transferring from her chair to standing without assistance, although it took the Appellant a few attempts to accomplish this. RN Rea also observed the Appellant walking from the chair to the front door without assistance or use of an assistive device, however, her gait was observed to be unsteady. The Appellant's witnesses testified that the Appellant requires reminding to use her cane for ambulation. RNs [REDACTED] and [REDACTED] documented in the Service Plan that the Appellant required partial assistance with ambulation and transfer. The testimony and documentation showed that the Appellant requires an assistive device for ambulation and also requires supervision for ambulation and transfer due to her past history of falls. The Respondent correctly assessed the Appellant as a Level 2 in these areas.

During the July 2019 PAS evaluation, the Appellant and her representatives raised the issue of problems with dysphagia. Because the Appellant had not been diagnosed with this medical condition at the time of the July 2019 PAS assessment and RN Rea was unable to confirm this possible medical issue with the Appellant's medical provider, a point was not awarded for the medical condition of dysphagia. However, the Appellant submitted a copy of her office visit on July 15, 2019 (hereinafter referred to as "OV notes") with her primary care provider, [REDACTED], which showed that the Appellant had been having issues with acid reflux and vomiting. According to the OV notes, the Appellant denied choking while eating, and refused further testing, instead requesting an ENT referral. At that visit, Dr. [REDACTED]

listed “[d]ifficulty in swallowing” as a diagnosis that was “attached to this encounter.” It appears that although she had not been officially diagnosed back in May 2019 when the MNER was signed by her physician, the testimony and documentation does show the Appellant was having difficulty with swallowing at or around the time of the July 2019 PAS evaluation. The Appellant’s physician documented this with the OV notes. Unfortunately, this information was not forwarded to Respondent, but was established within the allowable 14-day timeframe for submission of documentation.

The testimony and evidence showed that the Appellant did have the medical condition/symptom of dysphagia at the time of the July 2019 PAS assessment and, therefore, should be awarded an additional point. However, the additional point established at the hearing will not raise her service level points to a Level D. No other additional points were established at the hearing.

### **CONCLUSIONS OF LAW**

1. Policy provides that an individual’s service level for the ADW Program is determined by the number of points awarded on the PAS assessment tool for documented medical conditions and functional abilities that require nursing services.
2. The Appellant established that she should have been awarded an additional point for the medical condition/symptom of dysphagia.
3. The Appellant did not establish that she should have been awarded a Level 3 for the functional abilities in the areas of bathing, dressing, grooming, transferring or walking.
4. The Appellant should have received a total of 21 service level points on her July 2019 PAS.
5. At least 26 service level points are needed in order to qualify for a Level D service level for 125 – 155 service hours per month.
6. The Respondent’s decision to award the Appellant a Level C service level is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department’s proposal to establish the Appellant’s Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program service level services to a Level C.

**ENTERED this 17<sup>th</sup> day of October 2019.**

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**Lori Woodward, State Hearing Official  
Member, Board of Review**