



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Inspector General**

May 24, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1463

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Bureau for Senior Services

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1463

**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 May 18, 2022, on an appeal filed March 28, 2022.

The matter before the Hearing Officer arises from the March 17, 2022, decision by the Respondent to reduce the Appellant's service hours under the Aged and Disabled Waiver Program from Level B to Level A.

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

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §501.11
- D-2 Pre-Admission Screening (PAS) dated March 15, 2022
- D-3 PAS Summary dated March 15, 2022
- D-4 Notice of Decision Re-Evaluation Assessment Approved dated March 17, 2022
- D-5 Notice of Decision Re-Evaluation Assessment Approved dated March 17, 2022
- D-6 Notice of Decision Re-Evaluation Assessment Approved dated March 17, 2022
- D-7 PAS Summary dated March 22, 2021

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) On March 15, 2022, the Appellant was evaluated for continued eligibility for services under the Aged and Disabled Waiver (ADW) Program and to determine an appropriate level of care.
- 2) A Pre-Admission Screening (PAS) was completed with the Appellant to determine his functional abilities in the home (Exhibit D-2).
- 3) The Appellant was awarded 9 service level points from the PAS evaluation (Exhibit D-3).
- 4) The Respondent issued notice to the Appellant which advised him of his approved medical eligibility for the ADW program and that his service hours could not exceed a Level A determination or 62 hours per month (Exhibit D-4).
- 5) In March 2021, the Appellant was awarded 12 service level points and was approved at a Level B determination (Exhibit D-7).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §501.11.1 Medical Criteria documents that an individual must have five deficits as described on the PAS to qualify medically for the ADW program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Points	
#24	Decubitus; Stage 3 or 4	
#25	In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits	
#26	Functional abilities of individual in the home	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)

e. f.	Continence, Bowel Continence, Bladder	Level 3 or higher; must be incontinent
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person or two-person assistance in the home)
j.	Wheeling	Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)
#27	Individual has skilled needs in one or more of these areas: (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations	
#28	Individual is not capable of administering his/her own medications	

Bureau for Medical Services Provider Manual, §501.11.2.1 Service Level Criteria documents that 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.

Bureau for Medical Services Provider Manual §501.11.2.2, Service Level Range of Hours Per Month documents:

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

DISCUSSION

Policy stipulates that service level points for the ADW Program are determined by a yearly medical evaluation using the PAS assessment tool. The Appellant received 9 service level points as derived from the March 2022 PAS, which qualifies for Level A care, or a maximum of 62 hours each month.

The Appellant and his representative contested additional points were not awarded in the areas of vision, bladder incontinence, and dyspnea (shortness of breath).

Vision

The March 2022 PAS documented the Appellant's vision as a Level 1, not impaired. The Appellant's sister, [REDACTED], testified that the Appellant has impaired vision, but is unable to wear glasses due to a facial deformity. Rebecca Monroe, the nurse reviewer who completed the PAS for the Appellant, admitted that the Appellant should have been rated a Level 2, Impaired, in vision. Policy does not permit service level points to be given in the area of vision, therefore no additional points can be awarded.

Bladder Incontinence

The Appellant was rated a Level 1, Continent, in the area of bladder incontinence on the March 2022 PAS. Nurse Monroe documented that the Appellant denied any bladder accidents or dribbling and denied the use of incontinence supplies. [REDACTED] testified that since the assessment in March, the Appellant has experienced a bladder accident. [REDACTED] stated the frequency of the Appellant's seizures has increased which can cause the Appellant to have bladder incontinence. [REDACTED] stated the frequency of his bladder incontinence is unpredictable.

Based upon the Appellant's denial of bladder incontinence at the time of the March assessment, the Appellant was correctly evaluated as a Level 1. Although [REDACTED] testified that the Appellant has had a bladder accident since the evaluation, one accident in two months does not constitute bladder incontinence and an additional point in this area cannot be awarded.

Dyspnea

Nurse Monroe documented that the Appellant denied having a diagnosis of dyspnea and did not have a prescription medication used to treat dyspnea. [REDACTED] testified that the Appellant was prescribed an Albuterol inhaler last winter and she forgot to mention the medication to the nurse during the assessment.

Based upon credible testimony that the Appellant was prescribed an inhaler for shortness of breath, one additional point in the area of dyspnea will be awarded. The Appellant's March 2022 PAS will be updated to reflect the additional point, for a total of 10 service level points. However, additional points were not found in the areas of bladder incontinence or vision.

Whereas a total of 10 service level points were derived from the March 2022 PAS, the Appellant continues to meet medical eligibility for Level B care.

CONCLUSIONS OF LAW

- 1) Service level points for the ADW Program are determined annually using the PAS screening tool.
- 2) The Appellant received 9 service level points on the March 2022 PAS.
- 3) One additional point was found in the area of dyspnea for the Appellant.
- 4) The Appellant received 10 service level points from the March 2022 PAS, which is a Level B.
- 5) The Appellant continues to meet the medical criteria to receive services at a Level B.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to reduce the Appellant's service hours under the Aged and Disabled Waiver Program. The March 2022 Pre-Admission Screening will be updated to reflect the additional point in the area of dyspnea.

ENTERED this 24th day of May 2022.

Kristi Logan
Certified State Hearing Officer