



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

**Bill J. Crouch  
Cabinet Secretary**

**Board of Review  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
Telephone: (304) 352-0805 Fax: (304) 558-1992**

**Jolynn Marra  
Inspector General**

March 3, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 22-BOR-1098

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra Grueser, Department Representative

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

██████████,

**Appellant,**

**v.**

**Action Number: 22-BOR-1098**

**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 February 23, 2022, on an appeal filed January 18, 2022.

The matter before the Hearing Officer arises from the November 8, 2021 decision by the Respondent to reduce the Appellant's level of care in the Aged/Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as a witness for the Respondent was Braden Scheick. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- |     |   |
|-----|---|
| D-1 | BMS Provider Manual (excerpt)<br>Chapter 501 Aged and Disabled Waiver (ADW)<br>§§ 501.11 – 501.11.2.2 |
| D-2 | Hearing Request form  |
| D-3 | Notice of Decision, dated December 8, 2021  |
| D-4 | Notice of Decision, dated December 8, 2021  |

- D-5 Medical Necessity Evaluation Request Form  
Date of physician signature: September 20, 2021
- D-6 Pre-Admission Screening (PAS) form, dated December 6, 2021
- D-7 PAS Summary form, dated December 6, 2021
- D-8 PAS Summary form, dated November 18, 2020
- D-9 Medication list for Appellant

**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 was a participant in the Aged/Disabled Waiver (ADW) Program.
- 2) An assessment of the Appellant's medical necessity for ADW services was conducted on December 6, 2021. (Exhibit D-6)
- 3) By notices dated December 8, 2021, the Respondent advised the Appellant that he was "...determined medically eligible to continue to receive Waiver services." (Exhibits D-3 and D-4)
- 4) These notices (Exhibits D-3 and D-4) specified the level of care of ADW services, and stated, in pertinent part, "The number of homemaker service hours approved is based on your medical needs and cannot exceed 124 hours per month."
- 5) The Appellant's ADW service level was established at Level C (Exhibits D-3 and D-4) based on a total of 25 points on the 2021 evaluation (Exhibit D-7).
- 6) The Appellant's ADW service level was established at Level D based on a total of 27 points on the 2020 evaluation (Exhibit D-8).
- 7) The change in the Appellant's service level points, and corresponding level of care, was based solely on the change in the assessed level of the Appellant's functioning in the area of *communication* (Exhibits D-7 and D-8).
- 8) The Appellant disputed the Respondent's assessment of the area of *communication*.

- 9) During the 2020 assessment of the Appellant's functional abilities, the Appellant was awarded two (2) points in the area of *communication* (Exhibit D-8).
- 10) During the 2021 assessment of the Appellant's functional abilities, the Appellant was not awarded points in the area of *communication* (Exhibit D-7).
- 11) The Respondent's assessing nurse made notes describing the Appellant's functional ability in the home as part of the 2021 PAS (Exhibit D-6) and described the Appellant's functional ability in the area of *communication* as, "Member speech was clear, understandable, and appropriate, Member completed the majority of the PAS."
- 12) The Appellant is not a Level 3 or Level 4 in the area of *communication*.

### **APPLICABLE POLICY**

The Bureau for Medical Services (BMS) Provider Manual §501.11.2.1, sets the service level criteria for the ADW Program. This policy notes that communication, or Section #26.m of the PAS, results in two (2) points at either Level 3 or Level 4. No points are noted for Section #26.m when assessed at Level 1 or Level 2.

The Bureau for Medical Services (BMS) Provider Manual §501.11.2.2, provides the ADW service levels, the points required from a PAS assessment to receive those levels, and the range of monthly service hours provided at the respective levels. Level C is established between 18 and 25 points, and results in 94 to 124 service hours per month. Level D is established between 26 and 44 points, and results in 125 to 155 service hours per month.

### **DISCUSSION**

The Appellant has appealed the Respondent's decision to reduce his level of care in the ADW Program. The assessed service level points for the Appellant declined between evaluations of the Appellant in 2020 and 2021, resulting in a decrease in the Appellant's awarded level of care from Level D to Level C. The Respondent must show by a preponderance of the evidence that the Appellant did not have sufficient points to receive ADW services at Level D.

The Appellant was assessed in 2020 and 2021, and the change in his ADW level of care was entirely due to a change in the assessed level for *communication*. This area was the sole area of dispute in the hearing.

The Respondent's assessing nurse testified that he recalled conducting the PAS assessment with the Appellant, and that the Appellant was impaired, but understandable – which corresponds to a Level 2 in the area of *communication*, resulting in no service level points. The nurse additionally made notes at the time of the assessment describing the Appellant's speech as "clear, understandable, and appropriate..." The nurse testified that the *communication* descriptor for Level 3 was "understandable with aids," and for Level 4 was "inappropriate." The nurse testified that if oriented, an individual must have some other reason to score *communication* higher than

the Level 2 assessment of the Appellant in this area. The Appellant was oriented (Exhibits D-6, D-7, and D-8), and there was no evidence or testimony regarding the use of communication aids by the Appellant or that communication by the Appellant was inappropriate.

Testimony on the Appellant's behalf indicated that he is diagnosed with COPD (Exhibit D-6), contended this diagnosis affected the Appellant's ability to communicate, and suggested the nurse communicated with the Appellant on a "good day." Testimony also contended the Appellant's difficulties with hearing and vision affect his ability to communicate. There was no testimony or evidence provided to show that the Appellant either communicates appropriately with the use of communication aids, or that his communication is entirely inappropriate. The Appellant is not a Level 3 or Level 4 in the area of *communication* and was correctly scored in this area for service level determination purposes.

With no additional service level points revealed through evidence and testimony, the Appellant did not establish a higher service level (Level D) for the ADW Program. The Respondent correctly determined the Appellant's ADW service level at Level C.

### **CONCLUSION OF LAW**

Because the Appellant was correctly determined to have 25 service level points on a 2021 evaluation of his medical needs, the Respondent correctly established the Appellant's ADW service level at Level C.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to reduce the Appellant's Aged/Disabled Waiver services to a Level C.

**ENTERED this \_\_\_\_ Day of March 2022.**

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**Todd Thornton**  
**State Hearing Officer**