



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
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**Jolynn Marra
Inspector General**

March 8, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1169

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, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS
[REDACTED]

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

██████████,
Appellant,

v.

Action Number: 22-BOR-1169

**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 March 1, 2022, on a timely appeal filed February 1, 2022.

The matter before the Hearing Officer arises from the January 21, 2022 proposal of the Respondent to approve the Appellant for Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program services hours at a Level C.

At the hearing the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Joel Pitts, RN, KEPRO. The Appellant, who was present for the hearing, was represented by ██████████, her daughter. 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, §§501.11 – 501.11.2.2
- D-2 Pre-Admission Screening (PAS) form, dated January 20, 2022
- D-3 PAS Summary, dated January 20, 2022
- D-4 PAS Summary, dated March 9, 2021

Appellant's Exhibits:

- A-1 West Virginia Department of Health and Human Resources Bureau for Medical Services (Medicaid) Request for Hearing, signed and dated January 29, 2022
- A-2 Notice of Decision Re-Evaluation Assessment – Approved, dated January 21, 2022

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 January 20, 2022, the Appellant was evaluated to determine continued medical eligibility for the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program (ADW Program) and to be assigned the appropriate level of care.
- 2) Joel Pitts, RN with KEPRO, completed a Pre-Admission Screening (PAS) form with the Appellant to assess her functional abilities in the home. (Exhibit D-2)
- 3) As a result of his evaluation, RN Pitts assessed the Appellant with 24 level of care points based on his observations and the information derived from the PAS. (Exhibits D-2 and D-3)
- 4) On January 22, 2022, 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 Level C services, as a result of the PAS assessment. (Exhibit A-2)
- 5) The Appellant previously received 26 level of care points on her 2021 PAS, which qualified as Level D services. (Exhibit D-4)
- 6) A total of at least 26 points are required for the Appellant to receive services at a Level D. (Exhibit D-1)
- 7) The Appellant asserted that she should have received additional points in the areas of *Decubitus* and *Professional and Technical Care Needs continuous oxygen*. (Exhibit A-2)
- 8) The Appellant does not continuously use oxygen and is prescribed 2 liters of oxygen PRN (as needed). (Exhibit D-2)
- 9) The Appellant denied decubitus ulcers at the time of the January 2022 PAS. (Exhibit D-2)
- 10) The Appellant's daughter was present during the January 2022 PAS assessment and verbalized agreement (as did the Appellant) with the reviewed PAS. (Exhibit D-2)

APPLICABLE POLICY

ADW Services Manual §501.11.1, Medical Criteria, explains 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 | |

ADW Services Manual, §501.11.2.1, Service Level Criteria, explains 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.

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 Case Management and RN or PPL 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 member reports formal Personal Attendant services to assist with ADLs are not needed, a request for closure must be submitted. For members new to Personal Options, the first month's budget must be prorated by the F/EA to reflect the actual start date of services.

DISCUSSION

The Appellant underwent a PAS review in January 2022. The reviewing nurse, Joel Pitts, assessed the Appellant with 24 service level points based on his observations and the information derived from the medical evaluation. Twenty-four service level points equates to Level C (service limit of 94 – 124 hours per month) services. Previously, the Appellant was awarded 26 service level points on her March 2021 PAS, which equaled Level D services. The Appellant appeals the Respondent's determination of 24 service level points. In order to rise from a Level C to a Level D service level, the Appellant needs to have at least two additional points awarded.

██████████, the Appellant's daughter, asserted that the Appellant should have been awarded additional points in the areas of *Decubitus* and *Professional and Technical Care Needs–continuous oxygen*.

At the time of the January 2022 PAS assessment the Appellant denied having any decubitus ulcers. The Appellant testified that she described to RN Pitts that when her “sores” breakout, a homemade paste is applied. The testimony did indicate that the Appellant's “sores” are able to be alleviated with a homemade paste for a period of time. No additional point was established for *Decubitus*.

During the January 2022 PAS evaluation, the Appellant did have a prescription for 2 liters of oxygen on a PRN (as needed). The Appellant did relay to RN Pitts that she gets short of breath with exertion and after her dialysis treatments. ██████████ testified that the Appellant uses oxygen every day for a couple of hours but did acknowledge that the Appellant did not use continuous oxygen. Additionally, ██████████ testified that the Appellant does not sleep with her oxygen but does have it by the bed should she feel the need to use it at night. The Appellant testified that she uses oxygen “a lot” and last month she was very ill and had to use it all the time. The Appellant did not present evidence that she

uses oxygen continuously. No additional point was established for *Professional and Technical Care Needs–continuous oxygen*.

The testimony and evidence showed that the Appellant did not have decubitus ulcer(s) or use continuous oxygen at the time of the January 2022 PAS assessment. No additional points were established at the hearing. Therefore, the Respondent's decision to approve homemaker service hours not to exceed 124 hours per month (Level C service level) is affirmed.

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 did not establish that she should have been awarded an additional point *Decubitus* on her January 2022 PAS assessment.
3. The Appellant did not establish that she should have been awarded an additional point for *Professional and Technical Care Needs–continuous oxygen* on her January 2022 PAS assessment.
4. The Appellant received a total of 24 service level points on her January 2022 PAS.
5. 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 8th day of March 2022.

Lori Woodward, Certified State Hearing Officer