



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Jeffrey H. Coben, MD  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

April 20, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1351

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,

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

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

cc: Tamra Grueser, BoSS

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

██████████,

**Appellant,**

v.

**Action Number: 23-BOR-1351**

**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 April 19, 2023.

The matter before the Hearing Officer arises from the February 23, 2023 decision by the Respondent to reduce homemaker service hours under the Aged and Disabled Waiver Medicaid Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Melissa Grega, RN, KEPRO. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Appellant's son and attorney-in-fact; ██████████, Case Manager, Coordinating Council for Independent Living (CCIL); ██████████, Clinical Services Manager, CCIL; and ██████████, care provider, CCIL. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual, Aged and Disabled Waiver Policy Chapter 501, Sections 501.11, 501.11.1, 501.11.2.1 and 501.11.2.2
- D-2 Notice of Decision dated February 23, 2023
- D-3 Aged and Disabled Waiver Program Medical Necessity Evaluation Request dated February 9, 2023
- D-4 Pre-Admission Screening assessment completed on February 21, 2023

- D-5 Appellant's medication list
- D-6 PAS Summary submitted on February 22, 2023
- D-7 PAS Summary submitted on March 30, 2022

**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 is a recipient of Aged and Disabled Waiver (ADW) Medicaid benefits.
- 2) The Respondent, via KEPRO, completed a Pre-Admission Screening (PAS) for the Appellant on February 21, 2023, to reevaluate the Appellant's medical eligibility for the program and assess her current level of care needs (Exhibit D-4).
- 3) The Respondent determined that the Appellant remained medically eligible for ADW services.
- 4) The Appellant received 21 Level of Care points on the PAS, rendering her eligible for a Level "C" Level of Care (Exhibits D-4 and D-6).
- 5) The Appellant received 26 points and previously qualified for a Level "D" Level of Care based on her 2022 PAS (Exhibit D-7).
- 6) The Appellant was notified of the reevaluation findings in a Notice of Decision dated February 23, 2023 (Exhibit D-2).

**APPLICABLE POLICY**

*Aged and Disabled Waiver Medicaid Policy Chapter 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 (Exhibit D-1). 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)
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	

*Aged and Disabled Waiver Policy Manual Chapter 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.

*Aged and Disabled Waiver Policy Manual Chapter 501.11.2.2, Service Level Range of Hours*, provides information concerning the points required for each Level of Care.

### **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 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**

Policy dictates that an ADW Medicaid recipient's Level of Care is established based on the number of points received on the PAS assessment.

The Appellant contested the findings of the February 2023 PAS, which lowered her Level of Care from Level "D" (125-155 service hours per month) to Level "C" (94 to 124 service hours per month). Specifically, the Appellant contested the number of points awarded to her in the areas of bathing, dressing, grooming, hearing, vision, and dysphagia.

The Appellant was evaluated on the PAS as requiring physical assistance with bathing, dressing and grooming. During the hearing, the Appellant testified that she can no longer raise her arms to straighten them. She indicated that she can partially pull up her pants, but cannot get them up to her waist. The Appellant stated that she wears hearing aids and eyeglasses, and indicated that she has difficulty swallowing (dysphagia). Witnesses testifying on the Appellant's behalf described her mobility issues and noted that her condition has worsened.

The Respondent's witness, Melissa Grega, completed the February 2023 PAS assessment. Ms. Grega testified that, on the date of the PAS, the Appellant reported the ability to wash her face and upper body. The Appellant indicated that she could put on a shirt and pull up her pants, and that she could trim her own fingernails. Therefore, the Appellant was evaluated as needing physical assistance with bathing, dressing and grooming (Level 2- 1 point for each) as opposed to requiring total care (Level 3- 2 points for each). The Appellant's hearing and vision were rated as Level 2

(impaired/correctable) because she has functional hearing and vision with her hearing aids and eyeglasses. Ms. Grega noted on the PAS that the Appellant was able to hear when addressed in an elevated voice tone, but had some need for repeating. During the assessment, the Appellant denied the use of a magnifier to see, and reported that she could read and see the television without difficulty when wearing eyeglasses. Ms. Grega testified that no point was awarded for dysphagia because the Appellant did not have a diagnosis for that condition.

Tamra Grueser, the Respondent's representative, testified that the Appellant's case management agency could submit a request for additional homemaker service hours if the Appellant's condition has worsened.

Based on information provided during the hearing, the Appellant was evaluated correctly as requiring a Level "C" Level of Care for ADW services.

### **CONCLUSIONS OF LAW**

- 1) Policy states that an individual must receive at least 26 points on a PAS assessment to qualify for a Level "D" Level of Care under the ADW Medicaid Program.
- 2) The Appellant received 21 points on her February 2023 PAS, rendering her eligible for a Level of Care "C."
- 3) No additional points could be awarded to the Appellant based on information provided during the hearing.
- 4) The Appellant remains eligible for a Level of Care "C" as established on the February 2023 PAS.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to decrease the Appellant's Level of Care under the ADW Medicaid Program.

**ENTERED this 20th day of April 2023.**

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**Pamela L. Hinzman  
State Hearing Officer**