



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661**

**Earl Ray Tomblin  
Governor**

**Karen L. Bowling  
Cabinet Secretary**

March 26, 2015



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1023

Dear Ms. [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,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra R. Grueser, RN, WV Bureau of Senior Services  
[REDACTED], [REDACTED]

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

██████████,

**Claimant,**

**v.**

**ACTION NO.: 15-BOR-1023**

**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 19, 2015, on an appeal filed December 29, 2014.

The matter before the Hearing Officer arises from the December 11, 2014, decision by the Respondent to deny the Claimant's application for Level 2 benefits and services provided through the Medicaid Personal Care Services Program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, West Virginia Medical Institute (WVMI). The Claimant appeared *pro se*. Appearing as the Claimant's representative was ██████████, of the ██████████, ██████████. All participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Personal Care Services Policy Manual, Chapter 517, §§517.19.3 and 517.19.4, Service Level Criteria and Service Level Limits
- D-2 Personal Care Services Pre-Admission Screening Form completed by ██████████  
██████████ on October 6, 2014
- D-3 Personal Care Services Pre-Admission Screening Form completed by WV Bureau of Senior Citizens, dated December 9, 2014
- D-4 Personal Care Services Pre-Admission Screening Form completed by ██████████  
██████████ on October 24, 2013
- D-5 Personal Care Services Pre-Admission Screening Form completed by ██████████  
██████████ on August 9, 2013
- D-6 Notice of Decision, dated December 11, 2014

**Claimant'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) Representatives from the Claimant's home health care agency, [REDACTED] of [REDACTED], completed a Pre-Admission Screening Form (Exhibit D-2) with Claimant on October 6, 2014, as part of her continued participation in the Personal Care Services (PCS) Program. The Department's witness testified that based on the information obtained from the form, a nurse from the WV Medical Institute (WVMI) completed a Pre-Admission Screening (PAS) for the Claimant (Exhibit D-3) wherein the nurse assessed her with thirteen (13) service level points. The Department denied the Claimant for Service Level 2 in the PCS program. The Department reported its findings to the Claimant in a Notice of Decision dated December 11, 2014 (Exhibit D-6).
- 2) The Claimant's representative argued that the Claimant should have received one additional service level point in the area of administering medications.
- 3) The October 2014 PAS (Exhibit D-2) indicates that the Claimant is capable of administering her own medication. Item 28 of the October 2014 PAS (Exhibit D-2) reads "Individual is capable of administering his/her own medication" then contains boxes for the assessing nurse to check for "a. Yes," "b. With Prompting/Supervision" and "c. No." The Department's representative pointed out that the assessing nurse indicated "a. Yes." On page 11 of the PAS, the assessing nurse has written as follows: "[Claimant] states that she is able to administer her own medications without problem."
- 4) The Claimant's representative stated that after the assessing nurse completed the PAS, she went to the home and performed her annual nursing assessment. She stated that at that time, the Claimant told her she needed prompts to take her medications, because she often forgot to take them. She stated the Claimant reported that she needed someone to bring the medications and a fluid with which to take them to her because she had ambulatory difficulties.
- 5) The Claimant testified that she needed someone to help her with her medications. She testified that she needed someone to bring the medications and some type of beverage to her because standing and walking are difficult for her due to recent back surgery. She stated she often forgot to take her medications if there was no one there to remind her to take them.

## **APPLICABLE POLICY**

The WV Bureau of Medical Services (BMS) Personal Care Services Policy Manual §517.19.3 and §517.19.4 establish the Service Level criteria. There are two Service Levels for Personal Care Services, and points are determined based on the following sections of the PAS:

- #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 equal to or greater than Level 3 before points are given 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.
- The total number of points allowable is 30.

## **SERVICE LEVEL LIMITS**

The service limit for Personal Care Services (Direct Care) Level 1 Services is sixty (60) hours per calendar month. In the event that the PAS reflects fourteen (14) or more points as described in 517.19.3, and the member assessments fully document the need, the Personal Care Services Agency may request additional hours at Service Level 2.

<b><u>Service Level</u></b>	<b><u>Points Required</u></b>	<b><u>Range of Hours Per Month</u></b>
1	0 – 13	0 – 60
2	14 – 30	61 – 210

## **DISCUSSION**

The Claimant's representative proposed that she receive an additional service level point for administering medications. She referred to an annual nursing assessment she conducted with the Claimant sometime after the October 2014 PAS. However, she did not provide documentation regarding this assessment. The WVMI nurse who completed the PAS awarded no service level points to the Claimant for administering medications based on the documentation found in the October 2014 PAS, to the effect that the Claimant could administer her medications.

The Claimant initially was assessed for thirteen (13) service level points on the October 2014 PAS. No additional service level point should have been assessed on the PAS. Since policy requires fourteen (14) points in order to qualify for Service Level 2, the Claimant does not qualify for Personal Care Services at that level.

### **CONCLUSION OF LAW**

The Department assessed Claimant with thirteen (13) service level points on the October 6, 2014, Personal Care Services' Pre-Admission Screening. The Claimant's representative did not provide evidence or testimony to support her assertion that the Claimant should have received an additional service level point. The Claimant does not qualify for Service Level 2 in the Personal Care Services Program, as defined in BMS Personal Care Services Policy Manual §517.19.3 and §517.19.4.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to deny the Claimant's Personal Care Services at Service Level 2.

**ENTERED this 26<sup>th</sup> Day of March 2015.**

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**Stephen M. Baisden**  
**State Hearing Officer**