



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, West Virginia 25313

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

September 4, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2529

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,

Donna L. Toler  
State Hearing Officer  
Member, State Board of Review

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

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

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

██████████,

**Appellant,**

**v.**

**ACTION NO.: 15-BOR-2529**

**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 September 3, 2015, on an appeal filed July 10, 2015.

The matter before the Hearing Officer arises from the decision by the Respondent to deny the Appellant's request for an increase in the Appellant's monthly service hours in the Medicaid Personal Care Services Program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, West Virginia Medical Institute. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████ and her caregiver, ██████████, ██████████. All participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 WV Personal Care Prior Authorization Request with supporting documentation, submitted June 30, 2015
- D-2 Personal Care Pre-Admission Screening (PAS), submission date July 1, 2015
- D-3 Personal Care PAS summary sheet, dated July 1, 2015
- D-4 APS Healthcare Request for Personal Care Services, dated March 31, 2014

**Appellant's Exhibits:**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 Medicaid Personal Care Services.
- 2) On May 15, 2015, a Personal Care Member Assessment was completed through the Medicaid Representatives from the Appellant's home health care agency, [REDACTED]. (Exhibit D-2)
- 3) As a result of the May 15, 2015, APS Healthcare completed a Pre-Admission Screening (PAS) for the Appellant with the information obtained from the Personal Care Member Assessment. The Appellant was assessed with seven (7) service level points. (Exhibit D-3)
- 4) An individual must be assessed with fourteen (14) to thirty (30) points in order to be eligible for Service Level 2.
- 5) The Appellant was awarded service level points as follows (Exhibit D-3):
  - inability to vacate a building in the event of an emergency (1 point),
  - inability to administer her medications independently (1 point),
  - requiring assistance with bathing (1 point),
  - requiring assistance with dressing (1 point),
  - requiring assistance with grooming (1 point) and
  - incontinence of the bladder (2 points)
- 6) On June 30, 2015, a request for an increase from Service Level 1 to Level 2, along with medical documentation in support of the request was submitted to the Department on the Appellant's behalf. Medical documentation established that the Appellant required one-person assistance with walking and transferring, required assistance with eating (she is unable to cut her food) and is totally incontinent of the bowels (incontinence more than three times per week). (Exhibit D-1)
- 7) The Department was unable to produce a copy of a notice of denial but provided testimony that the request for an increase in service level was denied on July 1, 2015.
- 8) The Department's representative stated that the Department did not object to the awarding of additional service level points to the Appellant for Item #26 (a) eating - 1 point, (f) continence of bowels - 2 points, (h) transferring - 2 points and (i) walking - 2 points.
- 9) Since an applicant for PCS, Service Level 2, must demonstrate fourteen (14) service level points on his or her PAS, and since the Appellant initially was assessed with seven (7) points, the addition of points for eating, continence of the bowels, transferring and walking gave the Appellant sufficient points to be approved for Service Level 2.

## **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 medical documentation provided on behalf of the Appellant indicated that the Appellant should have received additional service level points for eating, continence of the bowels, walking and transferring. The Department had no objection to awarding the Appellant the additional seven (7) service points. Since the Appellant initially was assessed with seven (7) service points, the additional seven (7) service points results in a total of (14) service points.

Since policy requires fourteen (14) points in order to qualify for Service Level 2, the Appellant qualifies for Personal Care Services at Service Level 2.

### **CONCLUSION OF LAW**

The Department assessed Appellant with seven (7) service level points on the May 15, 2015, PAS. Medical documentation established the Appellant should have received additional service level points for eating, continence of bowels, transferring and walking. The Appellant qualifies 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 **REVERSE** the Department's decision to deny the Appellant's request for an increase in Personal Care Services from Service Level 1 to Service Level 2.

**ENTERED this 4<sup>th</sup> Day of September 2015.**

---

**Donna L. Toler**  
**State Hearing Officer**