



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
416 Adams St.
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 12, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1554

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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1554

**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 May 11, 2016, on a timely appeal filed March 22, 2016.

The matter before the Hearing Officer arises from the March 10, 2016 decision of the Respondent to approve Appellant's Medicaid Personal Care Services Program benefits at Service Level 1 (0-60 hours per month), as opposed to Service Level 2 (61-210 hours per month).

At the hearing the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN, ██████████. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, Office Supervisor, ██████████, and ██████████, RN Supervisor, ██████████. All witnesses 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 (Service Level Criteria) and 517.19.4 (Service Level Limits)
- D-2 WV Personal Care Prior Authorization Request dated 2/29/16, with the current Personal Care Pre-Admission Screening Form dated 1/20/16, Physician Certification dated 2/29/16, and a Personal Care Member Assessment dated 1/20/16
- D-3 WV Personal Care Prior Authorization Request dated 6/30/15, with the current Personal Care Pre-Admission Screening Form dated 5/15/15, and a Personal Care Member Assessment dated 5/15/15
- D-4 Notice of Decision dated 3/10/16

Appellant's Exhibits:

A-1 Additional medical documentation

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 March 10, 2016, Appellant was notified via a Notice of Decision (D-4) that she continued to meet medical eligibility criteria for participation in the Medicaid Personal Care Program, however, her request for Level 2 services was denied.
- 2) Pursuant to Medicaid Personal Care Program policy, there are two service levels – Level 1 requires that 0-13 service points be identified (qualifying the individual for 0-60 hours of services per month), and Level 2 requires 14-30 service points be identified (qualifying the individual for 61-210 hours of services per month).
- 3) As a matter of record, Respondent stipulated that the Appellant's January 2016 Pre-Admission Screening (PAS) form (D-2) identified eight (8) Personal Care Program service points.
- 4) As a matter of record, both parties reviewed the evidence submitted in this case and stipulated that the Appellant should be awarded additional Personal Care Program service points as follows: Eating – Level 2 (1 point), Transferring – Level 3 (2 points), Walking – Level 3 (2 points), and Grooming – Level 3 (2 points). As a result, seven (7) additional service level points were identified. Appellant is demonstrating a total of 15 Personal Care Program service points.

APPLICABLE POLICY

The WV Bureau for Medical Services (BMS) Personal Care Services Policy Manual §517.19.3 and §517.19.4 establish the service level and service limit criteria for the Personal Care Services program.

§517.19.3 states as follows, in pertinent part:

There are two Service Levels for Personal Care services. Points will be determined as follows 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 at Level 3 or Level 4 in order to get points
for j (wheeling)
- #27 Professional and Technical Care Needs – 1 point for continuous oxygen
- #28 Medication Administration – 1 point for b. or c.

Total number of points possible is 30.

§517.19.4 states as follows, in pertinent part:

The service limit for T1019 Personal Care (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 Agency may request additional hours at Service Level 2.

Service Level 1 – Requires 0-13 points – Range of Hours per Month (0-60)

Service Level 2 – Requires 14-30 points – Range of Hours per Month (61-210)

DISCUSSION

Evidence submitted at the hearing reveals that the Appellant was awarded eight (8) points stemming from her medical assessment conducted in January 2016. Credible testimony and supporting clinical documentation presented at the hearing reveals that seven (7) additional Personal Care Program points have been identified. Appellant's Personal Care Program point total is now confirmed to be 15 points.

CONCLUSION OF LAW

Whereas 15 service level points have been identified, the Appellant qualifies for Medicaid Personal Care Program benefits at a Service Level 2 (61-210 hours per month).

DECISION

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny the Appellant's request for Service Level 2 benefits through the Medicaid Personal Care Program.

ENTERED this _____ day of May 2016.

Thomas E. Arnett
State Hearing Officer
Member, Board of Review