



**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**

June 10, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1564

Dear Mr. [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: Appellant's Recourse to Hearing Decision
Form IG-BR-29

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

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

██████████,

Appellant,

v.

ACTION NO.: 16-BOR-1564

**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 June 7, 2016, on an appeal filed March 24, 2016.

The matter before the Hearing Officer arises from the March 3, 2016 decision by the Respondent to deny the Appellant'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, ██████████. The Appellant appeared *pro se*, by his mother ██████████. Appearing as the Appellant's representative was ██████████, RN, of the ██████████ County Council on Aging, ██████████ WV. 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 Pre-Admission Screening Form completed by the ██████████ County Council on Aging on February 23, 2016, including Personal Care Member Assessment and Nursing Notes attachments
- D-3 Personal Care Pre-Admission Screening Form completed by the ██████████ County Council on Aging on March 13, 2015
- D-4 Notice of Decision, dated March 3, 2016
- D-5 Service Level Notice of Decision, dated March 3, 2016
- D-6 Letter from ██████████, MD, dated April 28, 2016

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) Representatives from the Appellant's home health care agency, the [REDACTED] County Council on Aging, [REDACTED] WV, completed a Personal Care Pre-Admission Screening (PAS) Form (Exhibit D-2) with the Appellant on February 23, 2016, as part of his continued participation in the Personal Care Services (PCS) Program.
- 2) Based on the information obtained from the form, a nurse from [REDACTED] assessed the Appellant with ten service level points.
- 3) The Department denied the Appellant for Service Level 2 in the PCS program. The Department reported its findings to the Appellant in a Notice of Decision dated March 3, 2016 (Exhibit D-5).
- 4) The Appellant's representative, his mother, argued that the Appellant should have received five additional service level points on the February 23, 2016, PAS, for the functional abilities of eating, walking, transferring, vision and communication.

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.

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

DISCUSSION

The Department assessed Appellant with ten service level points on the February 23, 2016, Personal Care Services' Pre-Admission Screening (PAS). The Appellant's representative, his mother, argued that the Appellant should have received five additional service level points, for the functional abilities of eating, transferring, walking, vision and communication.

The Appellant's representative testified that the Appellant was hospitalized in March, after the PAS was completed. She testified that beginning in March, he began having atonic seizures, also known as "drop attacks," short sudden seizures which come without warning many times a day. She stated that the Appellant had these seizures when he was a child, but they stopped when he was about eight years old. She stated that his physicians have not been able to determine why they began again in March. She added the Appellant has had grand mal seizures throughout his life.

The Appellant's representative stated that the Appellant can feed himself, but he cannot cut up firm foods such as meats by himself. She testified that due to the sudden nature of his atonic seizures, he cannot have a sharp knife. She stated that due to the seizures, he could have a seizure while he had food in his mouth, which would be a choking hazard. The Appellant's witness, the nurse from [REDACTED] Council on Aging who conducted the February 23 PAS, testified that during the PAS, both the Appellant and his mother reported he could feed himself. She stated she may not have been accurate in assessing his eating ability at that time because she did not ask if he could cut his firm foods; she just asked if he could feed himself. For this reason, the Appellant should have another point added to his service level evaluation.

The Appellant's representative testified that she had to help him in and out of his bed and chairs due to his many atonic seizures. She testified that he has severe osteoporosis and is at a high fracture risk, so the falls he takes during transferring are very dangerous. The Appellant's witness testified that when she conducted the February 23 PAS, he could raise himself from a lying to a sitting position without assistance, so that led her to believe he could transfer without assistance.

The Appellant's representative testified that the Appellant's challenges with walking were similar to transferring, in that his seizure activity and osteoporosis make walking without one-person assistance very dangerous. She testified that walking with an assistive device does not help him because when he has an atonic seizure, he loses complete control of his body, and a cane or walker is of no help at these times.

For the functional abilities of walking and transferring, testimony from the Appellant's representative and witness indicates the Appellant experienced a sudden increase of seizure activity in March, after the PAS was conducted. However, testimony from the witness indicates she accurately assessed the Appellant's walking and transferring abilities at the time of the PAS.

The Appellant's representative testified that the Appellant's vision is poor but he has never been able to participate in an eye examination well enough for an optometrist to get a good prescription. She testified that his vision is better with glasses than without, but his vision is not corrected to the point it should be in order for him to see properly.

The Appellant's witness testified that during the February 23 PAS, the Appellant wore glasses and was able to sign his name on her tablet computer without difficulty. She testified that this lead her to believe his vision was somewhat correctable.

The Appellant's representative testified that the Appellant can speak, but he cannot communicate his needs. She testified that over the years she has attempted to allow him to speak for himself during physician's office visits, but she found that he is not capable of relaying what his medical needs are. She stated he cannot report to his doctors what medication he takes, what medical situations are occurring, or what day certain events or incidents happen. She added that he speaks well and can let her know if he is hungry or has other immediate needs, but he cannot communicate the information he needs to get across in order to be able to take care of himself.

The Appellant's witness testified that she was able to understand anything he said, but he would not answer a lot of her questions, instead deferring to his mother.

For the functional abilities of vision and communication, testimony from the Appellant's witness indicates the Appellant could see well enough to sign his name and could speak.

The Appellant's neurologist, [REDACTED], MD, wrote a letter dated April 28, 2016 (Exhibit D-6), confirming his increased seizure activity and ambulation difficulties. However, this letter was sent well after the Department had evaluated the February 23 PAS and established the Appellant's service level for the Personal Care program. For this reason, it was not considered in this decision.

The Appellant's representative provided testimony and evidence to indicate that an additional service level point should be added to his February 23 PAS, for the functional ability of eating. This increases the number of service level points to eleven. No additional points will be assessed for transferring, walking, vision or communication. Since policy requires fourteen (14) points in order to qualify for Service Level 2, the Appellant does not qualify for Personal Care Services at that level.

CONCLUSIONS OF LAW

- 1) The Department assessed Appellant with ten service level points on the February 23, 2016, Personal Care Services' Pre-Admission Screening.
- 2) The Appellant's representative provided evidence and testimony to support her assertion that the Appellant should have received one additional service level point for the functional ability of eating.
- 3) Policy requires that the Appellant receive fourteen service level points in order to qualify for Service Level 2. The Appellant 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 Appellant's Personal Care Services at Service Level 2.

ENTERED this 10th Day of June 2016.

Stephen M. Baisden
State Hearing Officer