

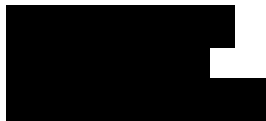


**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661**

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

May 9, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1395

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

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

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-1395

**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 18, 2017, on an appeal filed March 7, 2017.

The matter before the Hearing Officer arises from the March 1, 2017 decision by the Respondent to deny the Appellant's application for Level 2 benefits and services provided through the Medicaid Personal Care Services (PCS) 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, KEPRO. The Appellant appeared *pro se*. Appearing as the Appellant's representative was ██████████, RN, of ██████████, WV. Appearing as the Appellant's witness was ██████████, homemaker from ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Personal Care Services Policy Manual, Chapter 517, §§517.7.2, 517.7.3 and 517.7.4, Medical Criteria, Service Level Criteria and Service Level Limits
- D-2 Personal Care Pre-Admission Screening (PAS) Form completed by ██████████, submitted on February 27, 2016
- D-3 Personal Care Pre-Admission Screening Form completed by ██████████ on February 23, 2017, along with nursing notes and plan of care
- D-4 Letter from ██████████, ██████████ WV, dated January 10, 2017
- D-5 PAS completed by ██████████ on February 12, 2016
- D-6 Notice of Decision, dated March 1, 2017

Appellant's Exhibits:

A-1 Personal Care Additional Documentation Attachment from [REDACTED]

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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, [REDACTED], [REDACTED] WV, completed a Personal Care Pre-Admission Screening (PAS) Form (Exhibit D-3) with the Appellant on February 23, 2017, as part of her continued participation in the Personal Care Services (PCS) Program.
- 2) Based on the information obtained from the form, a nurse from APS Healthcare assessed the Appellant with twelve service level points. A PCS program participant needs 14 service level points in order to qualify for services at Level 2.
- 3) The Department denied the Appellant's request to participate in the PCS Program at Service Level 2. The Department reported its findings to the Appellant in a Notice of Decision dated March 1, 2017 (Exhibit D-6).
- 4) The Appellant's representative, her home health Registered Nurse (RN), argued that the Appellant should have received three additional service level points on the February 23, 2017, PAS, for the functional abilities of dressing, bowel incontinence and transferring. The Department's representative did not object to the addition of three service level points.

APPLICABLE POLICY

The WV Bureau of Medical Services (BMS) Personal Care Services Policy Manual §517.7.3 and §517.7.4 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 §517.7.3, 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 twelve service level points on the February 23, 2017, Personal Care Services' Pre-Admission Screening (PAS). The Appellant's representative, her home health RN, argued that the Appellant should have received three additional service level points, for the functional abilities of dressing, bowel incontinence and transferring.

The Appellant's representative submitted as evidence a Personal Care Additional Documentation Attachment (Exhibit A-1) documenting her observations regarding the Appellant's health care needs and ability to perform her activities of daily living. The Additional Documentation Attachment reads as follows in pertinent part:

Dressing:

[Appellant] requires physical assistance with dressing. Due to her arthritis and obesity, she needs assistance with buttons, zippers, pants, shoes and socks.

Continence: Bowel/Bladder:

[Appellant] has total incontinence of bladder and bowel. Both are greater than 3x weekly. She sits on chux and states her bowel incontinence is 1-2x a day. She wears depends when out. [Appellant] is obese and report [sic] difficulty with pericare.

Transferring:

She requires 1 person assist with transferring. She uses a rocking motion in order to initiate the transfer. [Appellant] has informal support for transferring when [home-maker] is not present. She uses walker, when ambulating and furniture at times in the home. Her ability to transfer is affected by her shortness of breath.

The Department's representative testified that this was revelatory documentation, however she did not have access to it until the hearing date. She stated that if she had received this information before the hearing, she may have negotiated a settlement in this issue before the hearing convened.

The Appellant's representative stated she made this documentation available to administrative personnel from her home health agency, [REDACTED], and she did not know why the WV Bureau of Senior Services or KEPRO did not have access to it before the hearing date.

The Appellant's representative provided evidence to indicate that additional service level points should be added to her February 2017 PAS, for the functional abilities of dressing, bowel incontinence and transferring. This increases the number of service level points to fifteen (15). Since policy requires fourteen (14) points in order to qualify for Service Level 2, the Appellant qualifies for Personal Care Services at that level.

CONCLUSIONS OF LAW

- 1) The Department assessed Appellant with twelve service level points on the February 23, 2017, Personal Care Services' Pre-Admission Screening.
- 2) The Appellant's representative provided evidence to support her assertion that the Appellant should have received three additional service level points for the functional abilities of dressing, bowel incontinence and transferring.
- 3) Policy requires that the Appellant receive fourteen service level points in order to qualify for Service Level 2. The Appellant qualifies for Service Level 2 in the Personal Care Services Program, as defined in BMS Personal Care Services Policy Manual §517.7.3 and §517.7.4.

DECISION

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

ENTERED this 9th Day of May 2017.

**Stephen M. Baisden
State Hearing Officer**