



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

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

October 17, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2300

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

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

██████████,

Appellant,

v.

ACTION NO.: 18-BOR-2300

**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 October 16, 2018, on an appeal filed August 31, 2018.

The matter before the Hearing Officer arises from the August 17, 2018 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 Respondent was Angela Marsh, RN, KEPRO. The Appellant appeared *pro se*. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Personal Care Services Policy Manual, Chapter 517, §§517.13.5, 517.13.6 and 517.13.7, Medical Criteria, Service Level Criteria and Service Level Limits
- D-2 Personal Care Pre-Admission Screening (PAS) Form completed by KEPRO, submitted on July 19, 2018
- D-3 2017 PAS Summary, dated August 1, 2017
- D-4 Medical Necessity Evaluation Request, signed by Appellant's physician on June 11, 2018
- D-5 Notice of Decision to Appellant, Denial of Level 2 Services, dated August 17, 2018
- D-6 Personal Care Services Member Assessment, dated July 30, 2018
- D-7 Personal Care Medication List, dated July 19, 2018

Appellant's Exhibits:

None

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) A representative from the Respondent's Utilization Management Contractor, KEPRO, completed a Personal Care Services Pre-Admission Screening (PAS) Form (Exhibit D-2) with the Appellant in her home on July 19, 2018, as part of her continued participation in the Personal Care Services (PCS) Program.
- 2) Based on the information obtained from the PAS, an evaluator at KEPRO assessed the Appellant with 13 service level points. A PCS Program participant needs 14 service level points to qualify for services at Level 2.
- 3) The Respondent denied the Appellant's request to participate in the PCS Program at Service Level 2. The Respondent reported its findings to the Appellant in a Notice of Decision dated July 19, 2018 (Exhibit D-5).
- 4) The Appellant argued that she should have received two additional service level points on the July 19, 2018 PAS, for the functional abilities of eating and bowel incontinence.

APPLICABLE POLICY

The WV Bureau of Medical Services (BMS) Personal Care Services Policy Manual §517.13.6 and §517.13.7 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 §517.13.6, 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 Respondent assessed the Appellant with 13 service level points on the July 19, 2018, Personal Care Services Pre-Admission Screening (PAS). The Appellant argued that she should have received two additional service level points, for the functional abilities of eating and bowel continence.

The Appellant testified that at the time of the PAS, she could cut up firmer foods such as meats. This is consistent with the July 19, 2018 PAS, which awarded the Appellant no service level points for eating. However, the Appellant testified that since the July 19 PAS, her right hand has “drawn up” or become contracted, which prevents her from using knives and other utensils to cut up food.

The July 19, 2018 PAS (Exhibit D-2, page 6) recorded the following information regarding the functional ability of eating: “[Appellant] reported the ability to cut food. [Appellant] reports ability to feed self with normal utensils. [Appellant] denies use of adaptive equipment to aide [sic] in the task of eating.”

For the functional ability of continence of bowel, the Appellant testified that she was experiencing more bowel accidents since the July 19, 2018 PAS was completed. She stated that she has been experiencing three to four accidents per week now. She added that she had accidents at a lower frequency at the time of the PAS, but the frequency had increased since that time.

Regarding the functional ability of continence of bowel, the July 19, 2018 PAS (Exhibit D-2, page 6) recorded that the Appellant had “less than three accidents per week.”

The Respondent’s representative argued that the Appellant’s testimony regarding eating and bowel incontinence indicated her functional abilities in these areas have worsened since the July 19, 2018 PAS. She stated that the Respondent’s decision to award 13 service level points was based on the July 19 PAS, and she could not consider abilities which may have deteriorated since that time.

The Appellant received 13 service level points on the July 19, 2018 PAS. The Appellant did not provide evidence or testimony sufficient to award additional points. Since policy requires 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) Policy requires that the Appellant receive 14 service level points to qualify for Service Level 2 in the Personal Care Services Program.
- 2) The Respondent correctly assessed the Appellant with 13 service level points on the July 19, 2018, Personal Care Services Pre-Admission Screening (PAS).
- 3) The Appellant qualifies for the Personal Care Services Program at Service Level 1, as defined in BMS Personal Care Services Policy Manual §§517.13.6 and 517.13.7.

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 17th Day of October 2018.

Stephen M. Baisden
State Hearing Officer