



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
Telephone: (304) 558-2278 Fax: (304) 558-1992**

**Bill J. Crouch  
Cabinet Secretary**

**Jolynn Marra  
Interim Inspector General**

August 8, 2019



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-1980

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,

Angela D. Signore  
State Hearing Officer  
Member, State Board of Review

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

cc: Carla Addair, WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 19-BOR-1980**

**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 July 17, 2019, on an appeal filed July 1, 2019.

The matter before the Hearing Officer arises from the June 20, 2019, decision by the Respondent to establish the Appellant's level of care for the Personal Care Services (PCS) program.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services. Appearing as witnesses for the Department were Stephanie Fout, RN, KEPRO and Melody Cottrell, RN, KEPRO. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All participants were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- D-1 Personal Care Services Policy Manual, Chapter 517, §§517.13.5 - Medical Criteria, 517.13.6 - Service Level Criteria, and 517.13.7 - Service Level Limits.
- D-2 Notice of Decision: Termination of Level 2 services, dated June 20, 2019.
- D-3 Personal Care Pre-Admission Screening (PAS) completed by KEPRO, submitted on May 16, 2019.
- D-4 ██████████ Medication List dated May 16, 2019.
- D-5 WV PCS Medical Necessity Evaluation Request (MNER), dated March 7, 2019.

**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) The Appellant was a recipient of Personal Care Services (PCS).
- 2) An annual re-assessment of the Appellant's need for PCS was conducted on May 16, 2019. (Exhibit D-3)
- 3) By notice dated June 20, 2019, the Appellant was advised that while she continued to meet medical eligibility for the program, her request for Level 2 services was denied. (Exhibit D-2)
- 4) The Appellant qualified for Level 1 services based on ten (10) points in qualifying areas of her PAS. The June 20, 2019 notice read, "In order to qualify for Level 1 services total points from the Pre-Admission Screening (PAS) form must range from 0 to 13. To qualify for Level 2 services points must range from 14 to 30." (Exhibit D-2 and D-3)
- 5) The Appellant's witness proposed additional points in the areas of *bathing, dressing, grooming, continence/bladder, continence/bowel, orientation, transferring, and wheeling.*
- 6) The Appellant is a Level 2, intermittently oriented, in the area of *orientation.*

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §517.13.6 states there are two Service Levels for Personal Care services. Points will be determined as follows based on the following sections of the PAS:

<u>Section</u>	<u>Description of Points</u>
#24	Decubitus – 1 point
#25	1 point for <b>b</b> , <b>c</b> , or <b>d</b> (vacating in an emergency)
#26	Functional abilities: Level 1 – 0 points Level 2 – 1 point for each item <b>a</b> through <b>i</b> Level 3 – 2 points for each item <b>a</b> through <b>m</b> , <b>i</b> (walking) must be Level 3 or Level 4 in order to get points for <b>j</b> (wheeling) Level 4 – 1 point for <b>a</b> , 1 point for <b>e</b> , 1 point for <b>f</b> , 2 points for <b>g</b> through <b>m</b>
#27	Professional and Technical Care Needs – 1 point for continuous oxygen
#28	Medication Administration – 1 point for <b>b</b> or <b>c</b>

Bureau for Medical Services Provider Manual §517.13.7 lists the Service Level limits as reflected on the PAS are:

<u>Service Level</u>	<u>Points Required</u>	<u>Range of Hours per Month</u>
1	Less than or equal to 13	Up to 60
2	14 – 30	61 – 210

### **DISCUSSION**

Policy stipulates that an individual's service level under the PCS program is determined by the number of points derived from the PAS used to determine medical eligibility for services. The Appellant was previously a recipient of Level 2 Personal Care Services (PCS). On May 16, 2019, a PAS was completed to review the Appellant's medical eligibility for the Personal Care Program.

On June 20, 2019, the Respondent issued a notice advising the Appellant that PCS Level 1 services had been approved and that points derived from the PAS were below the amount required for Level 2 PCS eligibility. The Appellant has appealed the Respondent's decision to establish her level of care for PCS. The Respondent must show by preponderance of the evidence that the medical eligibility of the Appellant was correctly assessed in the areas used to determine her PCS level of care.

This PAS revealed the Appellant was assessed at a Level 2 – or, requiring physical assistance – in the areas of *eating, bathing, dressing, grooming, transferring, walking, and medication administration*; and a Level 3 in the areas of *vacating* and *continence bladder*. The Appellant's guardian and witness, [REDACTED] (Ms. [REDACTED]), argued the Appellant should have received additional level-of-care points in the areas of *bathing, dressing, grooming, continence bladder, continence bowel, orientation, transferring* and *wheeling*. However, based on the testimony and evidence provided, the functionality assessed on the PAS matches the levels documented by the assessing nurse in the areas of *bathing, dressing, grooming, continence bladder, continence bowel, and wheeling*.

In the area of *orientation*, the Department assessed the Appellant as oriented to person, place, and time. Ms. [REDACTED] argued that the Appellant suffers from Schizophrenia and is not always fully oriented. She testified that "whenever you try to have a conversation with her.....she will talk to another part of the room. Some questions that you ask her, she can't hear you or will give an answer to something else.". Additionally, documentation in the PAS indicates the Appellant "hears people that are not there and sometimes talks to herself". Based upon evidence and credible testimony, it is found that the Appellant should have been assessed at Level 2, intermittently oriented, with an additional point (1) awarded in this area.

In the area of *transferring*, the Department assessed the Appellant as a Level 2, supervised/assisted. Ms. [REDACTED] argued that the Appellant requires two-person assistance (Level 3) when leaving or returning home. She testified that she and her husband must each hold the Appellant's hand when she goes up and down the stairs located outside of the house. While it may be true that two-person assistance is required to navigate the steps outside of the home, policy stipulates that the assessment is based upon functionality inside the home. Therefore, no additional points can be awarded in the functional area of transferring.

In order to qualify for Level 2 services, points must range from 14 to 30. There having been an

additional point awarded for *orientation*, bringing the total to eleven (11), still does not meet the minimum requirement of fourteen (14) points for Level 2 services.

### **CONCLUSIONS OF LAW**

- 1) To receive Level 2 services under the Personal Care Services program, an individual must have a minimum of fourteen (14) points awarded on the PAS assessment.
- 2) The Appellant was awarded ten (10) points on the June 2019 PAS, approving her for Level 1 services.
- 3) Credible testimony found that the Appellant has intermittent orientation, and one (1) additional point in the area of *orientation* is awarded.
- 4) The Appellant's point total is eleven (11), which is considered Level 1 services.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to establish the Appellant's level of care as Level 1 for the Personal Care Services program.

**ENTERED this \_\_\_\_ day of August 2019.**

---

**Angela D. Signore**  
**State Hearing Officer**