State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

December 11, 2009

-----and -----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 4, 2009. Your hearing request was based on the Department of Health and Human Resources' action to reduce your speech therapy sessions through the MR/DD Waiver Program.

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.

Service limits for speech therapy through the MR/DD Home and Community-Based Waiver Program are based on current policy and regulations. Some of the regulations state that speech therapy [Speech Therapist 1:1 Ratio] is limited to four (4) events per month unless prior authorization is approved. Effective with all IPP's conducted on or after November 1, 2006, the services will be selected by the member in conjunction with his/her IDT. The services must be based upon the assessed need and take into account the needs, wishes, desires, and goals of the member. Services selected must be within the boundaries of the individualized Waiver budget. (West Virginia Medicaid Regulations, Chapter 513.7.12 – Covered Services, Limitations, And Exclusions, For MR/DD Waiver Services, effective 11/1/07).

Information submitted at your hearing demonstrates that you were originally approved to receive more than four (4) events of speech therapy per month and that justification for the reduction was not supported by the evidence. In addition, the Claimant's IDT Team, physician and speech pathologist continue to recommend speech therapy two (2) times per week.

It is the decision of the State Hearing Officer to **reverse** the Department's action in reducing your speech therapy sessions through the Medicaid, Title XIX, MR/DD Waiver Program.

Sincerely,

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

Pc: Chairman, Board of Review
Steve Brady, MR/DD Waiver

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

Claimant,

vs. **Action Number: 09-BOR-1785**

West Virginia Department of Health and Human Resources,

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 11, 2009 for -----. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700, of the West Virginia Department of Health and Human Resources. This fair hearing was convened on January 26, 2009 on a timely appeal filed June 19, 2008.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The *Medicaid Home and Community-Based MR/DD Waiver* (authorized under Title XIX, Section 1915(c) of the Social Security Act) provides an alternative to services available in Intermediate Care Facilities for individuals with Mental Retardation or related conditions (ICF/MR). The primary purpose of an ICF/MR facility is to provide health and rehabilitative services. An ICF/MR facility provides services to persons who are in need of and who are receiving active treatment.

West Virginia's MR/DD Waiver Program provides for individuals who require an ICF/MR level of care, and who are otherwise eligible for participation in the program, to receive certain services in a home and/or community-based setting for the purpose of attaining independence, personal growth, and community inclusion.

III. PARTICIPANTS

Steve Brady, Operations Coordinator, MR/DD Waiver, BMS
-----, Director, APS Health Care
-----, RN, Registration Coordinator, APS Health Care
-----, Claimant's Parent/Guardian/Representative
-----, Claimant's Parent/Guardian/Representative

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

This hearing was conducted via videoconference / telephone conference technology.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether or not the Department was correct in its action to reduce the Claimant's speech therapy session provided through the Medicaid, MR/DD Waiver, Program.

V. APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – Covered Services, Limitations, And Exclusions, For MR/DD Waiver Services, effective 11/1/07.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department's Exhibits:

D-1 Notice of Denial of Services dated August 10, 2009
D-2 West Virginia Medicaid Regulations, Chapter 513– Covered Services, Limitations, And Exclusions, For MR/DD Waiver Services, effective 11/1/07 – Section 513.7.12 Extended Professional Services
D-3 E-mail correspondence dated June 22, 2009
D-4 APS Healthcare Purchase Request / assigned budget
D-5 Prescription Note Pad faxed March 12, 2009
D-6 Correspondence dated April 3, 2009 from [redacted] MA, CCC-SLP, Speech-Language Pathologist accompanied by [redacted] – Treatment Plan.
D-7 Includes the first two pages found in Exhibit D-3 and a handwritten note on the bottom of the 3rd page (Cover letter from Exhibit D-6) dated 5-14-09

VII. FINDINGS OF FACT:

1) On or about August 10, 2009, the Claimant and her representatives were notified via a Notice of Denial of Services that her request for speech therapy was denied. This notice states, in pertinent part:

> APS Healthcare has completed a second level review of -----Services' purchase request on behalf of Title XIX MR/DD Waiver member ----- for events/units of 92507GNHl – Speech Therapist 1:1 service. This requested amount has been denied based upon documentation provided by the Service Coordinator, -----, which indicates the service is to be used for routine speech therapy twice a week. The maximum events/units that can be authorized are 48 per year.

2) Evidence submitted at the hearing reveals that APS Healthcare is the Claimant's ASO (Administrative Service Organization). -----, Director at APS Healthcare, hereinafter APS, testified that APS is responsible for reviewing prior authorization requests when an individual desires services that exceed the service limit and/or the budget amount. APS conducts an annual assessment on each member based on ability and needs. As a result, an annual budget is calculated (D-4, page 2) for the individual. In this case, the Claimant's budget amount of $37,475.82 was approved for 3/1/2009 – 3/30/2010 despite exceeding the assigned (estimated) budget amount ($33,252.02) by $4,223.80. -----testified that the Claimant's budget was negotiated upward, and this includes 48 units of speech therapy. (The Claimant has requested 104 units of speech therapy be authorized). ----- further testified that prior to this budget year, the individual's annual budget amount was based on prior claims of services, not the assessed needs. While the Claimant's assessed needs are reviewed to determine the budget amount, -----noted that speech therapy sessions were approved in the previous budget at 2 per week but were not utilized.

3) -----testified that the budget for his daughter's services during the period 3/1/2008 - 3/30/2009 was $69,000.00. He indicated that his daughter was receiving two (2) events of speech therapy per week when her speech therapist was forced to take a medical leave of absence. Because the Claimant's service provider (-----) was unable to locate anyone else in the area qualified to provide speech therapy services, his daughter went without any speech therapy services for a period of nine (9) months. He contends that because the money allocated for speech therapy the previous year was not spent, the Department, through APS Healthcare, is trying to justify a decrease in the budget amount by saying his daughter no longer requires the medically necessary speech therapy sessions. In addition, -----noted that the Claimant's IDT continues to recommend speech therapy at two (2) events per week, as does her speech therapist and her primary care physician.

4) As a matter of record, ----- acknowledged that APS Healthcare considered the fact that the Claimant went without speech therapy services for the 9-month period when determining the Claimant's current budget. Furthermore, -----testified that APS did not receive sufficient

documentation to go over the service limit of 4 events per month. Exhibit D-6 (Treatment Plan), page 5 and 6 notes that speech therapy was recommended 1 time per week. The first page of this exhibit, however, is correspondence from the Claimant's Speech-Language Pathologist dated April 3, 2009 recommending the Claimant receive speech and language therapy two times a week, 30-minute sessions, individually. Exhibit D-5 further demonstrates that the Claimant's physician has recommended speech therapy 2 days a week and the e-mail correspondence from -----(first page of Exhibits D-3 and D-7) begins with – "The team for the above member is requesting a fair hearing regarding exceeding the cap on speech therapy."

5) Medicaid policy found in Chapter 513 – Covered Services, Limitations, And Exclusions For MR/DD Waiver Services, Section 513.7.12 (Extended Professional Services) indicates that Speech Therapist 1:1 ratio 92507-GN-Hl has a service limit of (4) events per month. However, subsequent policy listed under the "Prior Authorization" section indicates that speech therapy can be approved beyond the service limit of 4 events per month and states – "Effective with all annual IPP's conducted on or after November 1, 2006; the services will be selected by the member in conjunction with his/her IDT (Interdisciplinary Team). The services must be based upon the assessed need and take into account the needs, wishes, desires, and goals of the member. Services selected must be within the boundaries of the individualized Waiver budget."

VIII. CONCLUSIONS OF LAW:

1) Policy dictates that one-on-one (1:1) Speech Therapy sessions provided through the MR/DD Waiver Program have a service limit of 4 events per month. However, there are provisions in policy wherein an individual can request and be granted prior authorization to exceed the service limit. In order to be granted prior authorization, the services must be selected by the member in conjunction with his/her IDT and be based upon the assessed need - taking into account the needs, wishes, desires, and goals of the member. Policy goes on to state that the services selected must be within the boundaries of the individualized Waiver budget.

2) Evidence submitted at the hearing clearly demonstrates that the needs, wishes, desires and goals of those providing care and services to the Claimant recommend that 1:1 speech and language therapy be provided two (2) times per week. The evidence further demonstrates that the Claimant's "assessed / negotiated" budget was reduced (at least in part) as a result of her service provider's inability to make speech therapy available during the previous budget year. The Claimant's budget, pursuant to testimony received at the hearing, is negotiable and documentation submitted supports the need for speech therapy beyond the service limits.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department in reducing the Claimant's speech therapy sessions provided through the MR/DD Waiver Program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 11th Day of December, 2009

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