



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

February 23, 2012

-----for

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 16, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for additional units of Person-Centered Support (Agency: Traditional Option) provided through the Medicaid I/DD Waiver Services 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.

Policy that governs the Medicaid Intellectual Developmental Disabilities (I/DD) Waiver Services Program provides that Person-Centered Support (PCS) (Agency: Traditional Option) units must be authorized prior to services being provided. Prior authorizations are based on the member's assessed needs, and services must be within the individualized budget. The amount of the services is limited by the member's individualized budget and the annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.

Information submitted at the hearing confirms that the Claimant's additional PCS units (Agency: Traditional Option), were not clinically necessary.

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny your request for additional PCS Agency units provided through the I/DD Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review
Pc: Chairman, Board of Review
Patricia Nesbit, BMS
-----, REM

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

-----,

Claimant,

vs.

Action Number: 12-BOR-379

**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 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 convened on February 16, 2012 on a timely appeal filed December 29, 2011.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The Intellectual and Developmental Disabilities (I/DD) Waiver Program is West Virginia's home and community-based services program for individuals with intellectual and/or developmental disabilities. It is administered by the Bureau for Medical Services pursuant to a Medicaid waiver option approved by the Centers for Medicare and Medicaid (CMS). The I/DD Waiver Program reimburses for services to instruct, train, support, supervise, and assist individuals who have intellectual and/or developmental disabilities in achieving the highest level of independence and self-sufficiency as possible. The I/DD Waiver Program provides services in natural settings, homes and communities where the individual resides, works and shops.

III. PARTICIPANTS

-----, Claimant
-----, Claimant's mother/representative
-----, Service Provider, REM – Claimant's witness
-----, Service Coordinator, REM – Claimant's witness
-----, Service Supervisor, REM – Claimant's witness

Patricia Nesbit, BMS, Program Manager
Jennifer Eva, APS Healthcare, Respondent's witness

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

IV. QUESTION TO BE DECIDED

The question to be decided is whether or not the Department was correct in its decision to deny the Claimant's request for additional Person-Centered Support (Agency: Traditional) units through the I/DD Waiver Services Program.

V. APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – Covered Services, Limitations, And Exclusions, For I/DD Waiver Services.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department's Exhibits:

- D-1 West Virginia Medicaid Regulations, Chapter 513 – Covered Services, Limitations, And Exclusions, For MR/DD Waiver Services.
- D-2 Notice of Denial dated December 20, 2011
- D-3a Program Habilitation Training Schedule - PCS (Res)
- D-3b Program Habilitation Training Schedule - PCS (Com)
- D-3c Program Habilitation Training Schedule - PCS (CRH)

Claimant's Exhibits:

- C-1 Supporting documentation (64 pages)

VII. FINDINGS OF FACT:

- 1) On or about December 20, 2011, the Claimant, a recipient of services through the Medicaid Intellectual and Developmental Disabilities (I/DD) Waiver Services Program, was advised that his request for an increase in the amount of Person Centered Support – Agency 1:1-services was denied because it was not clinically necessary. The notice indicates the Claimant has already been approved for 5,522 units and that the request for an increase to 8,320 units was denied.
- 2) Pursuant to the Intellectual and Developmental Disabilities policy found in the Medicaid Provider Manual §513.9.1.8.1, Person-Centered Support (PCS) services consist of individually tailored training and/or support activities that enable the member to live and inclusively participate in the community in which the member resides, works, receives education, accesses health care, and engages in social and recreational activities. The

activities and environments are designed to increase the acquisition of skills and appropriate behavior that are necessary for the member to have greater independence, personal choice and allow for maximum inclusion into the community.

- 3) The Department, represented by Patricia Nisbet, a Program Manager at the Bureau for Medical Services (BMS), contends that policy allows for additional units of PCS services if prior authorization is granted. However, policy requires that this may only occur if there has been a change in the member's assessed clinical needs. The Department submitted Exhibit D-3a, D-3b and D-3c to show that Program Habilitation Training Schedules submitted with the Claimant's request for prior authorization of additional PCS units provides scheduling conflicts and overlapping services to the Claimant – several services are scheduled to be provided at the same time/same day. The Department further indicated that there is no explanation to describe what the initials at the top of each of the three (3) Program Habilitation Training Schedules - PCS (Res), PCS (Com) or PCS (CRH) - mean.
- 4) The Department's witness, Jennifer Eva, APS Healthcare, explained the process required to establish a budget and determine the units of PCS services allocated for recipients of I/DD Waiver Services. Ms. Eva noted that the Claimant's case management agency participated in this process and the current number of units approved for PCS services is comparable to the amount of services authorized the previous year. While Ms. Eva noted that the new manual changed how services are packaged, the Claimant is currently approved for 8.03 hours per day of services - PCS and respite.
- 5) -----, Service Supervisor, REM, testified that the information included in Exhibits D-3a, D-3b and D-3c is a projected or estimated schedule, and that is why services appear to overlap. The initials were placed at the top to help staff with scheduling - PCS "community, residential and home." Ms. Mathews cited the Claimant's Treatment Plan (C-1, page 3 of 96) to show that the team originally agreed that more PCS hours were needed, but that an error occurred when the budget was initially requested and approved. A budget modification and request for additional units was completed almost immediately following the initial budget request, but subsequently resulted in the denial that is under appeal.
- 6) The Claimant's mother testified that she had to care for ill family members this past year, and that her son has always been afforded services at 8 hour per day, 5 days a week. She is concerned that services will be reduced to 5 hours per day with the level that is currently approved.
- 7) The Department contends that the information provided fails to identify any clinical or medical changes in the Claimant, and as noted by the Claimant's representatives, the reason for the request to increase PCS Agency service units is due to new employment obligations by the Claimant's mother. While the Department acknowledged the error made by case management when the Claimant's budget was requested, the additional PCS Agency units would not have been approved - with the information submitted - at that time.
- 8) Policy found in the Medicaid Provider Manual, §513.9.1.8, provides that there are two types of Person-Centered Supports (PCS) available under the Traditional Option. PCS: Agency is available only to agency staff **not living** in the home with the member. PCS: Family is available only to family members or Specialized Family Care Providers **living** in the home

with the member.

- 9) Medicaid Provider Manual, §513.9.1.8.1, states that PCS: Agency units must be authorized prior to services being provided. PCS prior authorization is based on the assessed need and services must be within the member's individualized budget. The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed need.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations that govern the I/DD Waiver Program state that PCS Agency units must be authorized prior to services being provided. PCS prior authorization is based on the assessed need of the member and services must be within the member's individualized budget.
- 2) Evidence submitted at the hearing fails to demonstrate clinical justification for the requested increase in PCS Agency service units. The current level of PCS Agency units is consistent with the level of services provided in the previous year, and besides a change in the Claimant's caregivers' employment obligations, there is no marked change in the Claimant's assessed needs.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying the Claimant's request for additional PCS Agency service units.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this ____ Day of February, 2012

**Thomas E. Arnett
State Hearing Officer**

