



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

Earl Ray Tomblin
Governor

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

April 19, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 14, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your request on your son's behalf for 768 units of Behavioral Support Professional (BSP) services 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 Behavioral Support Professional (BSP) 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 full amount of the requested BSP units was not supported by the submitted documentation.

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the request for 768 units of Behavioral Support Professional service in the I/DD Waiver Services Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Patricia Nisbet, WV Bureau for Medical Services
[REDACTED] Autism Services Center

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

-----,

CLAIMANT,

vs.

ACTION NO.: 12-BOR-476

**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 concluded on April 19, 2012, 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 March 14, 2012 on a timely appeal filed January 9, 2012.

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

Jimmy Beirne, Autism Services Center, Claimant's Representative

-----, Claimant's mother and witness

██████████ Autism Services Center, Claimant's witness

-----, Claimant's sister and witness

---- ----, Claimant's sister and witness

Patricia Nisbet, WV Bureau for Medical Services, Department's Representative
Nora Oscanyan, APS Healthcare, Department's witness
April Goebel, APS Healthcare, Department's witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

All participants were placed under oath at the beginning of the hearing.

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 Behavioral Support Professional service 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 I/DD Waiver Services
- D-2 Notice of Denial dated December 20, 2011
- D-3 Inventory for Client and Agency Planning (ICAP) Examiner's Manual
- D-4 APS Healthcare Inventory for Client and Agency Planning dated August 10, 2011
- D-5 Intervention Procedure for Choking Others, dated January 1, 2006 and revised October 3, 2011
- D-6 Intervention Procedure for Obsessive-Compulsive Disorder (OCD) Reduction, dated January 1, 2004 and revised October 3, 2011
- D-7 Service Authorization Second-Level Negotiation Request, dated December 19, 2011
- D-8 Choking Behavior Frequency Graph

Claimant's Exhibits:

- C-1 Individual Program Plan (IPP) dated October 4, 2011
- C-2 Functional Assessment Interview dated October 3, 2011
- C-3 Incident Report Involving an ASC Client, dated April 4, 2011
- C-4 Incident Report Involving an ASC Client, dated June 23, 2011

- C-5 *Positive Behavior Support: Evolution of an Applied Science* by Edward G. Carr *et al*
C-6 *Positive Behavior Supports (PBS) Standards of Practice: Individual Level*, February 2007
C-7 I/DD Waiver Frequently Asked Questions (FAQ), dated February 16, 2012

VII. FINDINGS OF FACT:

- 1) On 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 768 Behavioral Support Professional (BSP) service units was denied. According to the Notice of Denial dated December 20, 2011 (Exhibit D-2), the Department denied the request because “ICAP (Inventory for Client and Agency Planning) scores do not support the need for BSP.”
- 2) Department’s witness testified that on March 8, 2012, APS Healthcare received documentation from Autism Services Center, the case management agency for Claimant. She testified that after reviewing this documentation, APS informed Autism Services Center that it would authorize 96 BSP service units to Claimant, with the remaining 672 requested units to be authorized for Therapeutic Consultant services. She testified that Autism Services Center declined this offer.
- 3) Intellectual/Developmental Disabilities (I/DD) policy found in the Medicaid Provider Manual §513.9.1.1.1 (Exhibit D-1) states as follows:

Behavior Support Professional: Traditional Option

Definition of Service: This service is provided to members with identified maladaptive behaviors and documented social behavior skill deficits documented through one of the following conditions:

- Member must currently exhibit maladaptive behaviors so severe that the adaptive functioning and ability to receive adaptive training is limited or impossible unless maladaptive behaviors are reduced or eliminated.
- Member may have a history of behaviors beyond one year that have resulted in severe life threatening situations such as fire setting or arson or sexual assault or offending behaviors that result in bodily harm to others or self.
- Member must have identified behaviors on the IPP that require tracking of behavioral data for the functional assessment.
- Member must have a functional assessment that outlines one or more specific target behaviors that are currently or will be addressed in a behavioral protocol or a positive behavior support plan.

The BSP is responsible to identify targeted maladaptive behaviors; develop hypotheses and Positive Behavior Support plans; develop habilitation plans

and provide training in the person-specific aspects and method of a plan of intervention to the direct care staff (i.e. family, person-centered support workers, facility-based day habilitation workers, supportive employment providers, crisis workers and respite workers.) The BSP also provides evaluation/monitoring of the effectiveness of the Positive Behavior Support plan through analysis of programming results.

...

Documentation: A detailed progress note or evaluation report for each service is required. Documentation must include all the items listed below:

- Member's name
- Service code
- Date of service
- Start time
- Stop time
- Total time spent
- Analysis of the data collected or problem identified
- Clinical outcome of the service provided
- Plan of intervention as the result of the analysis
- Signature and credentials of the agency staff

4) I/DD policy found in the Medicaid Provider Manual §513.9.1.1.15 states as follows:

Therapeutic Consultant: Traditional Option

Definition of Service: Therapeutic Consultant develops training plans and provides training in the person-specific aspects and method of a plan of intervention or instruction to the primary care providers (i.e., person-centered support workers, facility day habilitation providers and supportive employment providers). Also, the Therapeutic consultant provides training for respite workers (if applicable for respite-relevant training objectives or health or safety training objectives only). This service is provided to members with the assessed need for adaptive skills training. The Therapeutic Consultant also provides evaluation/monitoring of the effectiveness of the plan of intervention or instruction. This monitoring is performed and documented at minimum on a monthly basis. The Therapeutic Consultant observes the individual prior to developing a training plan. The Therapeutic Consultant follows up once the plan has been implemented to observe progress and revise the plan, as needed.

5) Claimant's representative reported that Claimant is a 30-year-old autistic man. He stated that Claimant is non-verbal, and that he expresses himself in non-verbal ways. He stated that Claimant expresses anxiety and frustration through certain obsessive-compulsive behaviors, and that he expresses emotional upset by choking other individuals. He referred to

documentation submitted by the Department which graphed the frequency of these choking incidents. (Exhibit D-8.) According to the graph, Claimant most recently exhibited these choking behaviors in April, June and October 2011. In addition, he submitted as evidence incident reports dated April 14, 2011 (Exhibit C-3) and June 23, 2011 (Exhibit C-4) wherein Claimant's choking episodes were described in detail. He argued that the dramatic and sometimes frightening nature of Claimant's choking behaviors warrants the inclusion of Behavior Support Professional units to prevent or minimize these incidents in the future.

- 6) Department's witness testified that Autism Services Center submitted intervention plans for choking behavior reduction (Exhibit D-5) and obsessive-compulsive (OCD) behavior reduction (Exhibit D-6.) She pointed out that each of these plans have a section entitled "Procedure Review Dates" which indicate when the plans were originally implemented and when they were revised. The choking behavior plan was implemented on January 1, 2006, and was revised on October 3, 2011, according to the "Procedure Review Dates" section of that document. Similarly, the OCD reduction plan was implemented on January 1, 2004, and was revised on October 3, 2011, according to the "Procedure Review Dates" section of Exhibit D-6. Department's representative argued there was no documentation submitted to APS to indicate that new intervention plans had been created which warranted the requested 768 units of Behavioral Support Professional service. She stated that policy (Exhibit D-1, "Documentation" section) specifically requires documentation in the form of a detailed progress note or evaluation report in order to approve BSP services, and the request for BSP units from the Autism Service Center did not include that documentation. However, she added, the information submitted to APS in advance of the March 14 hearing provided documentation which allowed APS to authorize 96 units of BSP services along with 672 units of Therapeutic Consultant services.
- 7) Claimant's representative responded that a behavioral support professional trains staff in how to perform the quality of life assessments, lifestyle enhancements, environmental assessments and other skills that help the people who care for and work with the Claimant to reduce his negative behaviors and to improve his quality of life. He stated that the alternative offered by the Department, Therapeutic Consultant service units, is not required to do any of these things. Claimant's representative testified that Autism Services Center has on file the information regarding the type of work and the type of training the behavior support professional does with the Center's staff.

VIII. CONCLUSIONS OF LAW:

- 1) Claimant's case management agency, Autism Services Center, requested the continuation of 768 units of Behavioral Support Professional (BSP) services in Claimant's I/DD Waiver Services assistance profile. APS Healthcare initially denied this request, but subsequently authorized 96 units of Behavioral Support Professional (BSP) units and 672 units of Therapeutic Consultant services. Claimant's case management agency declined this addition.
- 2) I/DD policy does not specify how, why or by what criteria the number of hours for BSP

services are determined.

- 3) The evidence shows that Claimant's episodes of maladaptive behavior have decreased and that the intervention plan is in maintenance mode. It is the Department's position that this indicates BSP services at the level requested are not needed. It is Claimant's position that the stability of his status is the result of having a high level of BSP services in place.
- 4) Department's representative indicated during the hearing that Claimant's case management agency did not provide the detailed progress note or evaluation report required for approval of BSP service. Claimant did not dispute this, but stated that his agency has that information on file.
- 5) It is not clear upon what basis the Department was able to determine that Claimant is eligible for 96 units of BSP service and 672 units of Therapeutic Consultant service, considering that the required documentation for the service was not provided. It is not the role of the Board of Review to order the Department to provide a lesser level of service than that which was originally requested.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying the request for 768 units of BSP service. The Board of Review stands mute on the offer of 96 units of BSP service and 672 units of Therapeutic Consultant service that was made subsequent to the determination that is before this board.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 19th Day of April, 2012

Stephen M. Baisden
State Hearing Officer