



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

Karen L. Bowling
Cabinet Secretary

March 9, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1083

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,

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

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

cc: Taniua Hardy, BMS

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1083

**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 March 4, 2015, on an appeal filed January 21, 2015.

The matter before the Hearing Officer arises from the December 9, 2014 decision, amended on December 30, 2014, by the Respondent to deny Claimant's request for Medicaid I/DD Waiver Program services that exceed the individualized participant budget.

At the hearing, the Respondent appeared by ██████████, APS Healthcare. Appearing as witnesses for the Department were ██████████, APS Healthcare, and Taniua Hardy, Bureau for Medical Services (BMS). The Claimant appeared pro se, but was represented by ██████████, Claimant's father; ██████████, WVU Center for Excellence in Disabilities; and ██████████. Appearing as witnesses for the Claimant were ██████████, Claimant's stepmother; ██████████; ██████████; and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated December 9, 2014, and Amended Notice of Denial, dated December 30, 2014
- D-2 APS Healthcare 2nd Level Negotiation Request dated November 25, 2014
- D-3 Budget Year December 1, 2014 – November 30, 2015
- D-4 Budget Year December 1, 2013 – November 30, 2014

- D-5 Inventory for Client and Agency Planning (ICAP) – evaluation date September 20, 2014
- D-11 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.8.1 – Person-Centered Support: Agency: Traditional Option
- D-12 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.10.1

* Exhibits D-6 through D-10 were not submitted into evidence by the Department.

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) On December 9, 2014, and again on December 30, 2014 (amended notice) the Claimant was notified (D-1) that her request for 17,520 units of Person-Centered Support: Agency (PCS-Agency) and 5,840 units of Respite (23,360 combined units) was denied. The notice letters state that the Claimant's individualized annual budget would be exceeded. The notice letters indicate that the Claimant was approved for 11,465 units of Respite and PCS-Agency combined.
- 2) The Claimant, through her representatives, contended that she is not requesting more services (PCS-Agency and Respite) than the amount that was authorized for the previous year through the 2nd Level Negotiation Request process. According to the Claimant's representatives, the Claimant requires 23,360 combined units (16 hours per day) of Respite and PCS-Agency services due to her required level of care, and the unavailability of her father due to employment.
- 3) As a matter of record, Respondent acknowledged that the Claimant received the requested amount of combined units of PCS-Agency and Respite in the previous year, but noted that the Claimant exceeded her individualized budget (D-4) by \$71,430.89. Moreover, the IDD Waiver Program as a whole exceeded its budget by more than fifty (\$50) million in the previous year, and because Respondent has been directed to operate within budgetary guidelines while providing services to 4,364 recipients, individualized program budgets cannot be exceeded. According to Exhibit D-3, the Claimant's current individualized budget (\$72,117.50) actually increased from the previous year by more than \$13,700. Respondent's representatives reported that the IDD Waiver Program cannot provide 24-hour care and is based on the premise that family members/informal supports will provide the care that is not program funded. The Claimant's current individualized budget allows for 8.8 hours per day (11,465 combined units) of PCS-Agency and Respite services, which is based on her assessed needs (D-5) in the Inventory for Client and Agency Planning

(ICAP). If there is a change in the individual's condition that demonstrates the need for additional services, the budget can be increased. However, pursuant to policy (D-11 and D-12), the amount of services, PCS-Agency and Respite, cannot exceed the member's individualized budget.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.8.1 *Person-Center Support: Agency: Traditional Option* – stipulates that Person-Centered Support (PCS) services consist of individually tailored training and/or support activities provided by awake and alert staff that enable the member to live and inclusively participate in the community in which the member resides, works, receives their 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 their community. Policy goes on to state that while the annual budget allocation may be adjusted (increased or decreased) if changes have occurred regarding the member's assessed needs, the amount of services is limited by the member's individualized budget.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.10.1 *Respite: Agency: Traditional Option* – includes agency services provided by awake and alert staff are specifically designed to provide temporary substitute care normal provided by a family member or a Specialized Family Care Provider. The services are to be used for relief of the primary care-giver(s) to help prevent the breakdown of the primary care-giver(s) due to the physical burden and emotional stress of providing continuous support and care to the defendant member. Respite Services consist of temporary care services for an individual who cannot provide for all of their own needs.

DISCUSSION

Evidence submitted at the hearing reveals that an IDD Waiver Program recipient's annual budget is determined by his or her assessed needs on the ICAP, and the Claimant's current ICAP warranted an increase in her annual budget by more than \$13,000 from the previous year. Policy provides that an individual's annual budget can be adjusted (increased or decreased), however, budget modifications can only occur if there is a change in the individual's assessed needs. While the Respondent acknowledged the Claimant exceeded her individualized budget the previous year, the regulations that govern the Medicaid I/DD Waiver Program stipulate that PCS-Agency and Respite services cannot exceed the individualized budget of the recipient. Any services required outside of the approved budget must be provided by the recipient's family and/or informal supports.

CONCLUSIONS OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Claimant's request for prior authorization of PCS and Respite services that exceed the individualized annual budget.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's request for prior authorization PCS-Agency and Respite services in excess of the Claimant's individualized budget.

ENTERED this ____ Day of March 2015.

**Thomas E. Arnett
State Hearing Officer**