



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

July 17, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1267

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, BMS, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 15-BOR-1267

**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 7, 2015, on an appeal filed February 6, 2015.

The matter before the Hearing Officer arises from the January 30, 2015 decision by the Respondent to deny the Appellant's request for Medicaid I/DD Waiver Program services that exceed the individualized budget.

At the hearing, the Respondent appeared by ██████████, Registration Coordinator, APS Healthcare. Appearing as a witness for the Department was Taniua Hardy, I/DD Program Manager, Bureau for Medical Services (BMS). The Appellant was present, but was represented by his mother, ██████████. Appearing as witnesses for the Appellant were ██████████, RN, ██████████; ██████████, friend of the Appellant; Del. ██████████, D-██████████, friend of the Appellant; ██████████, Service Coordinator, ██████████; ██████████, Staff Supervisor, ██████████; ██████████, Family Supervisor, ██████████; ██████████, Therapeutic Consultant, ██████████; ██████████; and ██████████, Dietician, ██████████.

All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated January 30, 2015
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.9.1.8.2
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.9.1.10.1

- D-4 APS Healthcare 2nd Level Negotiation Request dated January 26, 2015
- D-5 APS CareConnection for Title XIX I/DD Waiver Purchase Request Details for the period of January 8, 2015 to February 1, 2016

Appellant's Exhibits:

- C-1 APS CareConnection for Title XIX I/DD Waiver Inventory for Client and Agency Planning (evaluation date November 24, 2014)
- C-2 Nurse's Notes and Assessments
- C-3 Copy of Appellant's daily schedule
- C-4 Letter from [REDACTED] of [REDACTED] dated March 26, 2015
- C-5 Letter from [REDACTED], M.D., dated March 20, 2015
- C-6 Letter from [REDACTED] dated March 4, 2015
- C-7 APS CareConnection for Title XIX I/DD Waiver Purchase Details
- C-8 Individualized Program Plans/service plans for Appellant (hearing record remained open until July 14, 2015 for submission of this exhibit)
- C-9 West Virginia Olmstead Plan- November 1, 2005 (hearing record remained open until July 14, 2015 for submission of this exhibit)

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 January 30, 2015 the Appellant was notified (D-1) that his requests for 8,760 units of Person-Centered Support (PCS)-Family and 4,160 units of Respite under the I/DD Waiver Medicaid Program were denied. The notice indicates that the Appellant was approved for 3,276 units of PCS-Family services and 0 units of Respite. He was approved for the full 4,000 units of PCS-Agency services that he had requested.
- 2) [REDACTED], Registration Coordinator with APS Healthcare, represented the Department and testified that the Appellant's annual I/DD Waiver budget for the period of February 1, 2015 to January 31, 2016 is \$82,090.03 (Exhibit D-5). Mr. [REDACTED] indicated that if the Appellant had been awarded the total PCS-Family and Respite units he requested, his yearly budget would have been exceeded by \$35,867.16.

Taniua Hardy, I/DD Waiver Program Manager with the Bureau for Medical Services, testified that the Program has exceeded its total budget in the past and has now been directed to operate within budgetary guidelines. She contended that the I/DD Waiver Program is a supplemental program and is not intended to provide 24-hour care.

3) [REDACTED], the Appellant's mother, referred to Exhibit C-1, stating that the Appellant stays in bed most of the day, requires an assistive device for mobility, and always needs the support of another person. She pointed out that the Appellant's age equivalent is 3 to 5 months and he has no protective reflexes. Ms. [REDACTED] contended that the Appellant's service allotment has historically gone over budget, that the services were always approved in the past, and that the I/DD Waiver budget issues will hurt many families. She testified that she is gone from the home 10 hours per day with her full-time job and commute time. Without the additional services, she stated that she cannot earn monies to help pay for her son's needed items and she will have no respite time. She stated that she is the Appellant's care provider from 6 p.m. to 8 a.m. Monday through Friday and his around-the-clock caregiver on weekends. Ms. [REDACTED] testified that she cannot go to the grocery store, visit family or go for a walk, and will likely develop her own health issues without respite services. Ms. [REDACTED] stated that she is not requesting 24-hour assistance, but just needs enough staffing so that she can go to work and occasionally get out of her house. She stated that the Department approved all of the Appellant's requested nursing services, which was the most costly part of his budget, so the Department is aware of his needs.

[REDACTED], Dietician with the [REDACTED], testified that the Appellant has been able to remain stable - despite his fragility - because of the exemplary care his family provides. She stated that the Appellant weighs only 64 pounds.

[REDACTED], RN, [REDACTED], testified that the Appellant would not likely be alive if he resided outside of the home setting where he receives nursing and family supports.

Del. [REDACTED], D-[REDACTED] contended that different individuals have different needs, and that the Department should not carve out price tags. He testified that he has known the Appellant's family for 30 years and has observed the quality of care the Appellant receives. He pointed out that if Ms. [REDACTED] is forced to quit her job, she would receive Medicaid and unemployment benefits, costing the state additional money. In addition, he stated that the cost to the state would be greater if the Appellant was in an institutional setting.

[REDACTED], friend of the Appellant, questioned whether the Appellant would be considered an "at-risk" individual who would be afforded protection under disability regulations. He stated that the Appellant is residing in his environment of choice, and if he cannot live in his own home, he would have to be placed in a more costly setting.

APPLICABLE POLICY

I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.9.1.8.2, Person-Centered Support: Family: Traditional Option (D-2):

Person-Centered Support (PCS): Family is provided by awake and alert staff and consists 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 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.

All units of service must be prior authorized before being provided. Prior authorizations are based on assessed need and services must be within the member's individualized budget.

The amount of service is limited by 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 needs.

I/DD Waiver Manual Chapter 513.9.10.1 (D-3) states that the amount of Respite services is limited to the member's individualized budget, and the budget allocation can be adjusted only if changes have occurred regarding the member's assessed needs.

DISCUSSION

Evidence submitted at the hearing reveals that an I/DD Waiver Program recipient's annual budget is determined by his or her assessed needs. The amount of services is limited by the member's individualized budget. While the Appellant exceeded his individualized budget during previous years, regulations that govern the I/DD Waiver Program stipulate that services cannot exceed the individualized budget of the recipient, and the Department's representatives testified that the Department has now been directed to adhere to budgetary guidelines.

CONCLUSIONS OF LAW

Evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of 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 Appellant's request for services in excess of the Appellant's individualized budget.

ENTERED this 17th Day of July 2015.

**Pamela L. Hinzman
State Hearing Officer**