



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

May 5, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1327

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-1327

**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 April 29, 2015, on an appeal filed February 6, 2015. This matter was originally scheduled to convene on March 11, 2015, but was continued at the request of the Claimant.

The matter before the Hearing Officer arises from the January 26, 2015 decision by the Respondent to deny Claimant's request for Medicaid I/DD Waiver Program services that exceed the individualized 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 was represented by ██████████, ██████████, ██████████, and ██████████, Claimant's mother. Appearing as a witness for the Claimant were ██████████, ██████████, and ██████████, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.8.2 – Person-Centered Support: Family: Traditional Option
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.7 – Occupational Therapy: Traditional Option

- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.9 – Physical Therapy: Family: Traditional Option
- D-4 APS Healthcare 2nd Level Negotiation Request – signed on 1/16/15
- D-5 Authorized Budget Year 1/2/15 – 1/14/16
- *D-9 Notice of Decision dated 1/26/15
- *Exhibits D-6, D-7 and D-8 were not submitted

Claimant’s Exhibits:

- C-1 Correspondence from [REDACTED], [REDACTED] and [REDACTED], MS, PT, [REDACTED], dated 2/26/15 Occupational Therapy (OT) and Physical Therapy (PT) stating the services are medically necessary
- C-2 Seizure Chart drafted by [REDACTED] for the period of 7/20/13 through 2/5/15
- C-3 Correspondence from [REDACTED], RN, addressing the Claimant’s nursing needs and his recommendations
- C-4 Claimant’s Individualized Program Plan (IPP) dated 12/16/14

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 26, 2015 the Claimant was notified that her request for 9,592 units of Person-Centered Supports – Family, 208 units of Occupational Therapy (OT), and 208 units of Physical Therapy (PT) were denied because her individualized annual budget would be exceeded. The notice letter indicates, however, that the Claimant was approved for 2,950 units of Person-Centered Support (PCS) Family.
- 2) Claimant’s representatives contended that Occupational Therapy and Physical Therapy are medically necessary services for the Claimant (C-1), and that she requires more than the authorized PCS family due to the severity and frequency of her seizures (C-2). Representatives for the Claimant further contended that these services were discussed as part of the Claimant’s Individualized Program Plan (IPP), identified as Exhibit C.
- 3) Evidence proffered by the Respondent reveals that the Claimant underwent a needs assessment which resulted in her annual budget amount of \$67,791.95. Respondent noted that desired services are then purchased/requested based on the budget amount. If the requested services exceed the budget amount, prior authorization will be granted for those services that best meet the needs of the client. Services that have not been authorized can be reviewed by APS Healthcare in a first-level negotiation, and again by the Bureau for Medical Services (BMS) in a second-level negotiation to determine if the services are necessary. Respondent noted that if all of the services requested by the Claimant were

approved, she would exceed her individualized budget by \$27,925.16. Moreover, Respondent indicated that some of the requested services could be provided by Medicaid, outside of the IDD Waiver Program. Respondent acknowledged that the Claimant (and the IDD Waiver Program) exceeded budgetary guidelines in the previous year; however, Respondent indicated that it has been directed to operate within its budget while providing services to the 4,634 IDD Waiver recipients. As a result, individualized program budgets cannot be exceeded.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.2.3.2 *Person-Center Support: Personal Options Participant-Directed Option*: Person-Centered Support (PCS) is provided by awake and alert staff and consists of individually tailored training and/or support activities that enables the member to live and inclusively participate in the community in which the member resides, works, receives their education, access to 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. The amount of service is limited by the member's individualized participant-directed budget and spending plan.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.7 *Occupational Therapy: Traditional Option* provides that all units of service must be prior authorized. Prior authorizations are based on assessed need and services must be within the member's individualized budget.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.9 indicates that *Physical Therapy: Traditional Option* requires prior authorization. Prior authorizations are based on assessed need and services must be within the member's individualized budget.

DISCUSSION

Evidence submitted at the hearing reveals that an IDD Waiver Program recipient's annual budget is determined by his or her assessed needs. The Respondent acknowledged the Claimant exceeded her individualized budget the previous year, however, the regulations that govern the Medicaid I/DD Waiver Program stipulate that OT, PT and PCS services cannot exceed the individualized budget of the recipient. Policy provides that services in excess of the individualized annual budget cannot be authorized.

CONCLUSIONS OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Claimant'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 Claimant's request for services in excess of the Claimant's individualized budget.

ENTERED this _____ Day of May 2015.

**Thomas E. Arnett
State Hearing Officer**