



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

Karen L. Bowling
Cabinet Secretary

April 28, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1336

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,

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

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

cc: Pat Nisbet, WV Bureau for Medical Services
Taniua Hardy, WV Bureau for Medical Services

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1336

**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 23, 2015, on an appeal filed February 11, 2015.

The matter before the Hearing Officer arises from the February 3, 2015, decision by the Respondent to deny additional Person-Centered Support – Agency units in the Title XIX Intellectual/Developmental Disabilities (I/DD) Waiver Services Program.

At the hearing, the Respondent appeared by ██████████ of APS Healthcare. Appearing as a witnesses for the Department was ██████████, also of APS Healthcare, and Pat Nisbet of the WV Bureau for Medical Services. The Claimant appeared by ██████████, her service coordinator with ██████████ of ██████████. Appearing as witnesses for the Claimant were his mother ██████████, ██████████, ██████████ at ██████████, and ██████████, the Claimant's Direct Support Staff worker. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Medicaid Provider Manual Chapter 513 – I/DD Waiver Services – §513.9.1.8.1
- D-2 Service Authorization Second Level Negotiation Request, dated January 28, 2015
- D-3 Notice of Denial dated February 3, 2015
- D-4 I/DD Waiver Services Purchase Request Details for Budget Year February 1, 2015 to January 31, 2016

- D-5 I/DD Waiver Services Purchase Request Details for Budget Year February 1, 2014 to January 31, 2015
- D-6 I/DD Waiver Services Inventory for Client and Agency Planning (ICAP), dated December 3, 2014
- D-7 I/DD Waiver Services Inventory for Client and Agency Planning (ICAP), dated November 12, 2013
- D-8 I/DD Waiver Services Signature Page and Rights and Responsibilities form, dated December 3, 2014
- D-9 I/DD Waiver Services Signature Page and Rights and Responsibilities form, dated November 12, 2013

Claimant's Exhibits:

None

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) The Claimant is a participant in the Title XIX I/DD Waiver Services Program. The Service Coordinator for the Claimant's support agency, [REDACTED] of [REDACTED], submitted a request (Exhibit D-2) for 17,520 Person-Centered Support – Agency units on January 28, 2015. The request reads in part, "Guardian gave up units last year of [Person-Centered Support – Family] due to health issues and having difficulty lifting client without assistance. Guardian needs daily assistance with client due to her being total care with hygiene and daily living. Guardian has difficulty lifting client without assistance and needs DSS support to be able to care for client."
- 2) The Department issued a Notice of Denial for the additional units (Exhibit D-3) on February 3, 2015. The Notice of Denial reads as follows in part: "Your assessed annual budget would be or has been exceeded, and therefore this request is denied." The Notice of Denial indicated the approved number of units for the current budget year was 10,444. A "unit" equals 15 minutes of service time.
- 3) The Claimant's representative testified that since the Claimant has participated in the I/DD Waiver program beginning in 2007, her services always exceeded her budget, and the additional units have been approved. She testified that beginning in 2012, the Claimant's budget has steadily decreased, but she always received the additional units.
- 4) The Claimant's representative referred to the Inventory for Client and Agency Planning (ICAP) for the current budget year (Exhibit D-6). This document's "Problem Behaviors" section lists eight categories of maladaptive behaviors and an assessment of the degree to which the Claimant exhibits these behaviors. The categories include "hurts self," "hurts

others,” “destructive,” “disruptive,” “unusual habits,” “socially offensive,” “withdrawn” and “uncooperative.” The document indicates the Claimant was assessed as having “very serious – a severe problem” with six of these behaviors and “extremely serious – a critical problem” with one behavior. The Claimant was assessed as having “moderately serious – a moderate problem” in only one of the eight areas, socially offensive behavior. The ICAP also lists ABAS II scores indicating that the Claimant functions at an age equivalency of a five- to nine-month-old child. The Claimant’s representative stated that considering these problem behaviors and the Claimant’s very low level of functioning, neither she nor the Claimant’s caregivers could understand how the Claimant could be assigned such a low budget. She added that the Claimant had been approved for budget increases yearly before this year, and if she did not receive them, it will be difficult to prevent her from going into residential placement.

- 5) The Department’s representative testified that the I/DD Program for the state of West Virginia overspent its Federal allocation of monies by 50 million dollars last year. She testified that the Federal Government mandated the WV I/DD Program to stay within its total yearly spending amount, so the Department cannot approve increases to previously-established individual budgets.

APPLICABLE POLICY

WV Medicaid Provider Manual Chapter 513, §513.9.1.8.1 reads as follows in pertinent part regarding Person-Centered Support – Agency.

Person-Centered Support - Agency

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 his/her 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 his/her community.

Limitations/Caps:

- 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.
- PCS – Agency services cannot replace the routine care and supervision which is expected to be provided by a parent of a minor child or a Specialized Family Care Provider who provides care for a minor child. The [Interdisciplinary Team] must make every effort to meet the member’s assessed needs through natural supports.

DISCUSSION

I/DD policy limits the amount of units available to a program participant for Person-Centered Support – Agency. The Claimant was approved for 10,444 units of this support category. Policy is clear that the annual budget allocation may be increased “only if changes have occurred regarding the member’s assessed needs.” Testimony and evidence from the Department and the Claimant’s representative did not support that any such changes have occurred. Although the Claimant’s representative raised valid questions concerning the methodology by which the Department establishes its budgets, that issue is beyond the scope of this Fair Hearing. The only issue in question is the Department’s denial of the request for additional Person-Centered Support – Agency units.

CONCLUSIONS OF LAW

The Claimant’s request for additional Person-Centered Support – Agency units exceeded her yearly budgeted amount. The Claimant’s representative did not provide evidence that changes have occurred regarding her assessed needs. The Department acted correctly to deny the additional units, pursuant to the WV Medicaid Provider Manual, Chapter 513, §513.9.1.8.1.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department’s denial of additional Person-Centered Support – Agency units for the Claimant, in the Title XIX I/DD Waiver program.

ENTERED this 28th day of April 2015

Stephen M. Baisden
State Hearing Officer