



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
416 Adams St., Suite 307  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

June 2, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-1571

Dear Mr. [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: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Taniua Hardy, BMS

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-1571**

**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 May 27, 2015, on an appeal filed March 16, 2015.

The matter before the Hearing Officer arises from the March 9, 2015 decision by the Respondent to deny Appellant's request for Medicaid I/DD Waiver Program services that exceed his 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 Appellant was represented by ██████████, Appellant's father; and ██████████, Service Coordinator for ██████████. 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*, §513.9.1.8.1 – Person-Centered Support: Agency: Traditional Option
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.10.1 – Respite: Agency: Traditional Option
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.16 – Transportation: Miles: Traditional Option
- D-4 APS Healthcare 2<sup>nd</sup> Level Negotiation Request dated 3/3/15
- D-5 Authorized services/budget year 12/1/14 – 11/30/15
- D-6 Authorized services/budget year 12/1/13 – 11/30/14

D-9 Notice of Denial dated March 9, 2015  
Exhibits D-7 and D-8 were not submitted into evidence by Respondent

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 March 9, 2015, Appellant was notified (D-9) that his request for 3,080 units of Person-Centered Support: Agency (PCS-Agency), 4,208 units of Respite 1:1, 800 units of Respite 1:2, and 8,300 units of Transportation (miles) was denied. The notice indicates that the Appellant's individualized annual budget would be exceeded if all requested services/units were approved, but goes on to note that the Appellant was approved for 1,324 units of PCS-Agency, 1,100 units of Respite 1:1, 150 units of Respite 1:2, and 5,000 units of Transportation (miles).
- 2) The Appellant, through his representatives, contended that he is not requesting more services (PCS-Agency, Respite and Transportation) than the amount authorized the previous year (D-6), and that the requested units are required due to the ailing health of his elderly parents.
- 3) As a matter of record, Respondent acknowledged that the Appellant received the requested amount of combined units of PCS-Agency, Respite and Transportation in the previous year, but noted that the Appellant exceeded his individualized budget. In fact, Respondent indicated that the I/DD Waiver Program as a whole exceeded its budget by more than \$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. Respondent noted that if there is a change in the individual's condition that demonstrates the need for additional services, the budget allocation can be increased. However, pursuant to policy (D-1, D-2 and D-3), the amount of services - PCS-Agency, Respite, and Transportation - 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 dependent member. Respite Services consist of temporary care services for an individual who cannot provide for all of their own needs. The amount of services is limited by the member's individualized budget unless there is a change in the member's assessed needs.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.16.1 *Transportation: Miles: Traditional Option* – indicates that transportation miles are provided to the I/DD Waiver member for trips to and from the member's home, licensed I/DD facility-based day habilitation program or supported employment activities, or to the site of the planned activity or service which is addressed on the IPP and based on assessed need. The amount of service is limited by the member's individualized budget allocation unless there is a change in the member's assessed needs.

## **DISCUSSION**

Evidence submitted at the hearing reveals that an I/DD Waiver Program member's annual budget allocation is determined by his or her assessed needs. 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 Appellant exceeded his individualized budget the previous year, the regulations that govern the Medicaid I/DD Waiver Program stipulate that PCS-Agency, Respite and Transportation services cannot exceed the individualized budget of the recipient unless the member's needs have changed. Because the Board of Review is bound by policy, and there is no evidence to indicate the Appellant's needs have changed, Respondent has acted within regulatory guidelines in its decision to deny the Appellant's second-level negotiation request to exceed his individualized budget.

## **CONCLUSIONS OF LAW**

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of PCS-Agency, Respite, and Transportation 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 second-level request for IDD Medicaid payment of PCS-Agency, Respite and Transportation services in excess of the Appellant's individualized budget.

**ENTERED this \_\_\_\_ Day of June 2015.**

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**Thomas E. Arnett  
State Hearing Officer**