STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Karen L. Bowling
Cabinet Secretary

May 13, 2015

[redacted]

RE: [redacted] v. WV DHHR
ACTION NO.: 15-BOR-1689

Dear Mr. & Mrs. [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,

Lori Woodward
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

[redacted],

Claimant,

v. **Action Number: 15-BOR-1689**

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 [redacted]. 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 12, 2015, on an appeal filed March 31, 2015.

The matter before the Hearing Officer arises from the March 13, 2015 decision 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 [redacted], APS Healthcare. Appearing as witnesses for the Department were [redacted], APS Healthcare, and Taniua Hardy, Bureau for Medical Services (BMS). The Claimant appeared by his Representatives, [redacted], and [redacted], Service Coordinator with [redacted] All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Denial Letter, dated March 13, 2015
- D-2 I/DD Waiver Policy Manual, §513.9.2.3.3
- D-3 2nd Level Negotiation Request, dated March 3, 2015
- D-4 Requested Services for Service Year March 1, 2015 to February 29, 2015

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 recipient of the I/DD Waiver Program. A second-level request for additional units for Respite-Personal Options under the I/DD Waiver Program was submitted for the Claimant on March 3, 2015. (Exhibit D-3)

2) The Department issued a Notice of Denial on March 13, 2015, advising the Claimant that the request for additional units was denied. The reason for denial contained in the notice stated that the Claimant's annual budget would have been exceeded or has been exceeded. (Exhibit D-1)

3) The 2nd level services request made on the Claimant's behalf was for an additional 1830 units of Respite-Personal Options, for an annual total of 3456 units. (Exhibit D-3)

4) Evidence proffered by the Respondent reveals that the Claimant underwent a needs assessment which resulted in his annual budget for service year March 1, 2015 to February 29, 2016, in the amount of $51,213.29. The Respondent noted that if all of the Respite service units requested by the Claimant were approved, he would exceed his individualized budget by $5012.87. This amount was calculated by multiplying the additional units requested by the cost of the Respite services, 1830 x $2.74. The Respondent indicated that the Department has been directed to operate within its budget while providing services to the 4630 I/DD Waiver recipients. As a result, individualized program budgets cannot be exceeded.

5) The Claimant's representatives testified that although they both understand the Department's budgetary constraints, they cannot understand why the Claimant's Inventory for Client and Agency Planning (ICAP) score was higher than the previous year, resulting in a reduced annual budget for the Claimant. They both testified that the Claimant needs to be supervised "24/7", and needs constant step-by-step instruction for all activities, and must be kept busy during the day so he will sleep at night. The Claimant's representatives state they have no family or community support and in order for them to get true respite, the Claimant must be placed in a crisis unit, which uses twice the normal respite units.

6) The Respondent stated for the record that neither the individualized assigned budget nor continued program eligibility is based on the ICAP scores alone. There are other assessments that are conducted during the annual functional assessment that are considered. A complete clinical review of the Claimant's annual functional assessment against psychological reports determined that there was clinical consistency. It was also noted that of the Claimant's assigned budget amount $44,190.72 has been directed to his guardians for reimbursement for the in-home services they provide, which could be reduced to obtain more respite services. The Respondent noted that one service can be reduced in order to modify other units in another service.

APPLICABLE POLICY

WV Medicaid Provider Manual Chapter 513 – I/DD Waiver Services, §513.9.2.3.3, Respite: Participant-Directed Option: Personal Option Model states that the amount of service is limited by the member's individualized participant-directed budget. It further states that the annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.

DISCUSSION

The evidence presented showed that the Claimant's annual budget was determined to be $51,213.29 for the budget year March 1, 2015 to February 29, 2016. The additional Respite services requested would exceed his annual budget by $5,012.87. The regulations that govern the Medicaid I/DD Waiver Program stipulate that Respite-Personal Options services cannot exceed the individualized budget of the recipient. The annual budget allocation may be increased only if changes have occurred regarding the member's assessed needs. There was no evidence submitted to show that there was a change in the Claimant's assessed needs sufficient to warrant consideration of increasing his annual budget allocation for Respite-Personal Option services.

The Department's decision to deny the Claimant's request for prior authorization of Respite-Personal Option services that exceed the individualized annual budget was within policy guidelines.

CONCLUSIONS OF LAW

1) The requested additional Respite-Personal Option service units would exceed the Claimant's annual budget for the budget year March 1, 2015 to February 29, 2016.

2) Per policy, the Claimant cannot exceed his annual budget allocation for Respite-Personal Option.

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 Respite-Personal Option services in excess of the Claimant's individualized budget.

ENTERED this 13th day of May 2015.

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Lori Woodward, State Hearing Officer