



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 24, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NOS.: 15-BOR-1787; 15-BOR-2298

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matters.

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, Department Representative

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

██████████,

Appellant,

v.

**Action Numbers: 15-BOR-1787
15-BOR-2298**

**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 August 4, 2015, on an appeal filed April 13, 2015.

The matter before the Hearing Officer arises from the March 12, 2015 decision by the Respondent to deny or reduce the Appellant's services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program, and the November 20, 2014 decision by the Respondent to establish the Appellant's individualized budget by which those services are limited.

At the hearing, the Respondent appeared by ██████████ and Tania Hardy. ██████████ ██████████ and ██████████ attended the hearing but did not participate. The Appellant was represented by her guardian, ██████████. Appearing as witnesses for the Appellant were ██████████, ██████████, ██████████, ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Amended notice of decision, dated May 28, 2015
- D-2 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.8.1
- D-3 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.8.2
- D-4 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.10.1
- D-5 Service Authorization second-level negotiation request form, dated March 4, 2015

- D-6 Screen prints from the Respondent's data system detailing the Appellant's itemized budget for the budget year beginning February 1, 2015
- D-7 Letter from Taniua Hardy, dated July 9, 2015

Appellant's Exhibits:

- A-1 Annual Functional Assessment Signature Page, dated November 13, 2014
- A-2 Annual Functional Assessment Signature Page, dated November 14, 2013
- A-3 Respondent Rights and Responsibilities form, signed November 13, 2014
- A-4 Respondent Rights and Responsibilities form, signed November 14, 2013

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 Appellant is a participant in the I/DD Waiver Program.
- 2) The Appellant submitted a second-level negotiation request for services through the I/DD Waiver Program on March 4, 2015 (Exhibit D-5). The specific services requested included 2,080 units of Person-Centered Support – Agency (“PCS-A”); 8,320 units of Person-Centered Support – Family (“PCS-F”); and 600 units of Respite.
- 3) The Respondent notified the Appellant of its decision to deny the full amount of requested service units, offering the reason for denial as the “...assessed annual budget would have been exceeded or has been exceeded...” (Exhibit D-1).
- 4) The Respondent's notification to the Appellant indicated 342 units of PCS-A, 5,540 units of PCS-F and no units of Respite were approvable (Exhibit D-1).
- 5) The full amount of units requested would result in the Appellant exceeding her assigned budget for the year starting February 1, 2015, and the approvable units represent a maximized combination of PCS-A, PCS-F and Respite units that can be purchased within the confines of the Appellant's assigned budget (Exhibit D-6).
- 6) The factors used to determine the Appellant's individualized budget were correct.

APPLICABLE POLICY

The policy regarding prior authorization of units of service through the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services. At §513.9.1.10.1, §513.9.1.8.1 and §513.9.1.8.2, this policy reads, “The amount of service is limited by the member's individualized budget.”

The process used by the Respondent to determine a member's individualized budget is considered a "proprietary algorithm." On this basis, the Respondent refuses to provide any policy describing that process.

DISCUSSION

Policy for the I/DD Waiver Program requires services to an approved individual be limited by that individual's budget. The full amount of services requested by the Appellant would cause her to exceed her assigned budget, and the amount deemed approvable by the Respondent represents a maximized number of units in those categories that would keep the Appellant under budget. This hearing additionally addressed a dispute of the Appellant's individualized budget amount, but the Appellant had no dispute of the information used to determine her budget, only the budget-generating process itself. The Board of Review does not hear matters that are solely disputes of policy and the process used by the Respondent to determine the Appellant's individualized budget is policy, albeit policy the Respondent explicitly conceals from the public. The Respondent is correct to deny the Appellant's request for services that would exceed the Appellant's assigned budget, and the Respondent's determination of the Appellant's budget is correct.

CONCLUSIONS OF LAW

- 1) Because the factors used to determine the Appellant's individualized budget were correct, the budget itself was correct.
- 2) Because the Appellant's request for services through the I/DD Waiver Program would cause her to exceed her assigned budget, the Respondent must deny the Appellant's request.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's determination of the Appellant's I/DD Waiver budget and to **uphold** the Respondent's denial of Appellant's request for second-level services through the I/DD Waiver Program.

ENTERED this ____ Day of August 2015.

Todd Thornton
State Hearing Officer