



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

July 7, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1789

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 Official 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,

Donna L. Toler
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-1789

**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 July 7, 2015, on an appeal filed April 13, 2015.

The matter before the Hearing Officer arises from the March 27, 2015 decision by the Respondent to deny Appellant's request for Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program services that exceed the individualized participant budget.

At the hearing, the Respondent appeared by ██████████, APS Healthcare. Appearing as a witness for the Department was Taniua Hardy, Bureau for Medical Services (BMS). The Appellant was present. The Appellant was represented by ██████████, Service Coordinator Supervisor with ██████████ by request of the Appellant's guardian, ██████████, also present. Appearing as witnesses for the Appellant was ██████████, ██████████, Service Coordinator with ██████████ ██████████, Day-Hab Supervisor with ██████████, and ██████████, Therapeutic Consultant with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Present at the hearing in an observation capacity, was ██████████, Attorney/Healthcare Fellow, Legal Aid of West Virginia. Ms. ██████████ was granted permission to observe the hearing by the Appellant's guardian, ██████████.

Department's Exhibits:

- D-1 Notice of Denial, dated March 27, 2015
- D-2 I/DD Waiver Policy Manual, §§513.9.1.6
- D-3 Service Authorization - 2nd Level Negotiation Request, dated March 18, 2015

Appellant'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 Official sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant is a recipient of benefits and services through Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program (I/DD Program).
- 2) On March 18, 2015, a second-level request for 3120 units of Facility-Based Day Habilitation : Traditional Option (FBDH) 1:1-2 and 3120 units of FBDH 1:3-4, was submitted on the Appellant's behalf under the I/DD Program. (Exhibit D-3)
- 3) The Respondent issued a Notice of Denial on March 27, 2015, advising the Appellant that the requested units were denied because the Appellant's annual budget would have been exceeded or had been exceeded. (Exhibit D-1)
- 4) The additional requested service units would have exceeded the Appellant's assessed annual budget by \$10,496.32. (Exhibits D-3 and D-4)
- 5) The Appellant's current annual budget is \$77,850.30. In order not to exceed the Appellant's assigned annual budget, only 805 of the requested units of FBDH 1:1-2 and 862 of the requested units of FBDH 1:3-4 can be approved by the Department. (Exhibit D-4)

APPLICABLE POLICY

West Virginia Medicaid Regulations, §513.9.1.6 states that all units of Facility-Based Day Habilitation services must be prior authorized before being provided. Prior authorizations are based on assessed need *and* services must be within the member's individualized budget. The budget allocation may be adjusted only if changes have occurred regarding the member's assessed needs.

DISCUSSION

The evidence presented showed that the Appellant's annual budget was determined to be \$77,850.30, for the budget year April 1, 2015 through March 31, 2016. The additional requested

units of the aforementioned services exceeded the Appellant's annual budget by \$10,496.32, according to the Department's representative.

The Appellant's representative, [REDACTED] testified that the Appellant has received increases in his budget every year since at least 2008, with no major improvement or decline in his condition. [REDACTED] testified that the Appellant needs day habilitation services to work on his academic skills and to provide informal guidelines for his behavior. [REDACTED] testified that the Appellant has been a participant in the [REDACTED] Program for several years and that the program has been beneficial to him and has assisted him in being productive. [REDACTED] testified that the Appellant's "school" ([REDACTED] is his life and that because he enjoys going so immensely, his guardian has to drive him by the facility on the weekends just to show him it is closed.

The Department's representative pointed out that the Appellant receives direct care support services 14.2 hours Monday through Friday and 10.7 hours on Saturday and Sunday, adding that the majority of the budget is dedicated to Personal Care Services - Personal Options to the Appellant's guardian [REDACTED]. There was no evidence presented to show that the Appellant demonstrated changes resulting in an increased need of services since his annual assessment, upon which his current budget is based. The additional requested units would place the Appellant over his current annual budget. The Department's decision to deny the Appellant's request for prior authorization of Facility-Based Day Habilitation Program services that exceed the individualized annual budget was within policy guidelines.

CONCLUSIONS OF LAW

- 1) The requested additional Facility-Based Day Habilitation Program service units would exceed the Appellant's annual budget for the budget year April 1, 2015 to March 31, 2016.
- 2) Per policy, the Appellant cannot exceed his annual budget allocation for the requested services.

DECISION

It is the decision of the State Hearing Official to **uphold** the Department's action to deny the Appellant's request for prior authorization of Facility-Based Habilitation Program services in excess of the Appellant's individualized budget.

ENTERED this 7th day of July 2015.

Donna L. Toler, State Hearing Officer