



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

June 29, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1846

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

cc: Taniua Hardy, WV Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 15-BOR-1846

**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 June 11, 2015, on an appeal filed April 17, 2015.

The matter before the Hearing Officer arises from the April 3, 2015, decision by the Respondent to deny the Appellant 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 witnesses for the Department were ██████████, also of APS Healthcare, and Taniua Hardy of the WV Bureau for Medical Services. The Appellant appeared by ██████████, his service coordinator with ██████████. Appearing as witnesses for the Appellant were his mother ██████████, and ██████████, ██████████ and ██████████, the Appellant's Direct Support Staff workers. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Second Level Negotiation Request – Notice of Denial dated April 3, 2015
- D-2 WV Medicaid Provider Manual Chapter 513 – I/DD Waiver Services – §513.9.1.8.1
- D-3 Service Authorization Second Level Negotiation Request, dated March 30, 2015
- D-4 I/DD Waiver Services Purchase Request Details for Budget Year April 1, 2015 to March 31, 2016

D-5 I/DD Waiver Services Purchase Request Details for Budget Year April 1, 2014 to March 31, 2015

Appellant's Exhibits:

- A-1 Behavioral Service Professional / Therapeutic Consultant Assessment and Monthly Progress Report for Appellant from [REDACTED], dated March 12, 2015
- A-2 Written statement from [REDACTED], MD, of [REDACTED], [REDACTED], dated March 18, 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 Appellant is a participant in the Title XIX I/DD Waiver Services Program.
- 2) The Service Coordinator for the Appellant's support agency, [REDACTED], submitted a request (Exhibit D-3) for 17,256 Person-Centered Support – Agency units on March 30, 2015.
- 3) The Department denied the request, issuing a Notice of Denial for the additional units (Exhibit D-1) on April 3, 2015. The Notice of Denial indicated the Appellant was approved for 9260 Person-Centered Support – Agency units for the budget year of April 1, 2015 through March 31, 2016. A "unit" equals 15 minutes of service time.

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 Person-Centered Support – Agency units available to a program participant. The Appellant was approved for 9260 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.”

The request for increased Person-Centered Support – Agency units (Exhibit D-3) reads in part, “The client relies on staff for most daily activities due to age and medical conditions of the mother/guardian. The client not only has a compromised immune system but difficulty walking. The staff assists the client with exercising and movement programs to keep active and healthy. The staff also assists in transportation of mother and client to and from appointments and habilitation locations since the mother is unable to drive. Due to residence location it is difficult (if at all possible) to schedule transit services to commute to and from appointments.”

The Appellant's representative submitted as evidence a Behavioral Service Professional/Therapeutic Consultant Assessment and Monthly Progress Report for Appellant from [REDACTED], dated March 12, 2015 (Exhibit A-1). This report details the success rate of the Appellant in certain programs aimed to help him reach certain goals related to his self-care, such as bathing himself with assistance 60% of the time and dressing himself with limited assistance 70% of the time. The report indicates the Appellant is not successful on a consistent basis in meeting these goals.

The Appellant's mother testified that the Appellant needs the support because repetition is the only way he can make progress in achieving any measure of functionality in the areas in which the above-mentioned programs attempt to help. She testified that she needs the support because she no longer is able to perform the tasks needed to care for her son. She stated that her son is incontinent and requires total care with diaper changes and bathing. She added that she has knee, hip and breathing problems that prevent her from providing him with the care he requires.

There can be no dispute that the care for the Appellant presents a great challenge to his family and to his service agency. However, neither the Appellant's mother nor his representative submitted information to indicate that there was a change in the member's assessed needs, as policy requires. Although the Appellant's mother testified that she has more difficulty in meeting his needs now than in the past, the documentation does not indicate how much care she was able to provide in the past compared to how much care she provides now.

CONCLUSIONS OF LAW

The Appellant's request for additional Person-Centered Support – Agency units exceeded his yearly budgeted amount. The Appellant's representative did not provide evidence that changes have occurred regarding his 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 Appellant, in the Title XIX I/DD Waiver program.

ENTERED this 29th day of June 2015

**Stephen M. Baisden
State Hearing Officer**