



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

July 30, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-1882

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Taniua Hardy, BMS, WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-1882**

**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 29, 2015, on an appeal filed April 23, 2015.

The matter before the Hearing Officer arises from the April 15, 2015 decision by the Respondent to deny the Appellant's request for Medicaid I/DD Waiver Program services that exceed the individualized budget.

At the hearing, the Respondent appeared by ██████████, Provider Educator, APS Healthcare. Appearing as a witness for the Department was Taniua Hardy, I/DD Program Manager, Bureau for Medical Services (BMS). The Appellant was represented by his mother, ██████████. Appearing as witnesses for the Appellant were ██████████, Service Coordinator, ██████████, ██████████, and ██████████, Therapeutic Consultant, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated April 15, 2015
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.9.2.3.3
- D-3 APS Healthcare 2<sup>nd</sup> Level Negotiation Request dated April 2, 2015
- D-4 APS CareConnection for Title XIX I/DD Waiver Purchase Request Details for the budget year of December 1, 2014 through November 30, 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) On April 15, 2015, the Appellant was notified (D-1) that his request for 6,912 units of Respite under the I/DD Waiver Medicaid Program was denied. The notice indicates that the Appellant was instead approved for 2,256 units of the requested Respite services.
- 2) [REDACTED], Provider Educator with APS Healthcare, represented the Department and testified that the Appellant's annual I/DD Waiver budget for the period of December 1, 2014 through November 30, 2015 is \$86,970.23 (see Exhibit D-4). Ms. [REDACTED] indicated that if the Appellant had been awarded the total Respite units he requested, his yearly budget would have been exceeded by \$12,755.47. The Department's representatives testified that the Department has exceeded its I/DD Waiver Program budget by \$50 million in previous years, and has now been directed to adhere to budgetary guidelines. They indicated that the Appellant's budget actually increased for the current year based on changes in his condition, but services in excess of the budget can no longer be approved. They contended that the I/DD Waiver Program is a supplemental program and is not intended to provide 24-hour care.
- 3) The Appellant's mother and primary caretaker, [REDACTED], testified that her son has spastic cerebral palsy, and that she requires assistance, as he gets up three to five times per night. Ms. [REDACTED] stated that her husband passed away; therefore, she is the Appellant's only caretaker and she gets no rest. She testified that her own health would deteriorate without assistance. The Department's representatives indicated that Ms. [REDACTED] currently serves as her son's Respite provider, and Respite care is meant to give primary caretakers a break from providing care. They indicated that units can be moved between services to satisfy Appellant/caretaker needs.

### **APPLICABLE POLICY**

I/DD Waiver Manual Chapter 513.9.10.1 (D-2) states that the amount of Respite services is limited to the member's individualized budget, and the budget allocation can be adjusted only if changes have occurred regarding the member's assessed needs.

## **DISCUSSION**

Evidence submitted at the hearing reveals that an I/DD Waiver Program recipient's annual budget is determined by his or her assessed needs. The amount of services is limited by the member's individualized budget. While the Appellant was reportedly approved for services in excess of his individualized budget last year, regulations that govern the I/DD Waiver Program stipulate that services cannot exceed the individualized budget of the recipient, and the Department's representatives testified that the Department has now been directed to adhere to budgetary guidelines.

## **CONCLUSIONS OF LAW**

Evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of 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 request for services in excess of his individualized budget.

**ENTERED this 30th Day of July 2015.**

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**Pamela L. Hinzman**  
**State Hearing Officer**