



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
416 Adams St., Suite 307  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

July 13, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-1953

Dear Mr. [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,

Thomas E. Arnett  
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-1953**

**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 8, 2015, on an appeal filed April 28, 2015.

The matter before the Hearing Officer arises from the April 17, 2015 decision by the Respondent to deny Appellant's request for Medicaid I/DD Waiver Program services that exceed his individualized budget.

At the hearing, the Respondent appeared by ██████████, APS Healthcare. Appearing as a witness for the Department was Tania Hardy, Bureau for Medical Services (BMS). The Appellant was represented by ██████████, Appellant's mother. Appearing as witnesses for the Appellant were ██████████, Service Coordinator, ██████████; ██████████, Therapeutic Consultant, ██████████; and ██████████, Therapeutic Consultant. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated 4/17/15
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.8.2 – Person-Centered Support: Family: Traditional Option
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.10.1 – Respite: Agency: Traditional Option

- D-4 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.5.1 – Environmental Accessibility Adaptions: Home: Traditional Option
- D-5 APS Healthcare 2<sup>nd</sup> Level Negotiation Request dated 4/2/15
- D-6 Authorized services/budget year 4/1/15 – 4/30/16

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 an active recipient of Medicaid I/DD Waiver Program benefits and services.
- 2) In response to a Second-Level Negotiation Request (D-5) submitted on April 2, 2015, Respondent notified the Appellant (D-1) that additional units of Respite (1:1-2), PCS-Family, and Environmental Accessibility Adaptions (EAA) were denied. The notice indicates that the request was denied because approval would exceed or has exceeded the member's individualized budget.
- 3) Appellant's current individualized annual budget allocation (D-6) was set at \$63,741.25. Respondent noted that pursuant to I/DD Waiver Program policy, approvable service units – Respite, PCS-Family and EAA – are limited by the individualized budget. Because the Appellant's I/DD Waiver individualized annual budget would have been exceeded by \$13,664.33 if all the requested units were approved, the request was denied. It was noted, however, that the annual budget allocation may be adjusted (increased or decreased) if there are documented changes in the member's assessed needs.
- 4) Appellant's representatives contended that the Appellant's brother, also an I/DD Waiver Program member, has a budget that is considerably larger than the Appellant's, and that the Appellant and his brother reside in the same household and demonstrate similar needs. Respondent noted that each budget is individualized and that there are several variables within the needs assessment that can change the budget allocation. Respondent proffered testimony to indicate that the I/DD Waiver Program must operate within its annual budget while providing services to 4,634 members.

## APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.5.1 Environmental Accessibility Adaptions: Home: Traditional Option, are physical adaptations to the member’s family home which maximize the members physical accessibility to the home and within the home. EAA-Home must be documented in the member’s IPP. Additionally, these adaptations enable the member to function with greater independence in the home. This service is used only after all other non-family funding sources have been exhausted. Policy goes on to indicate that the amount of service is limited by the member’s individualized budget.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.8.2 *Person-Center Support: Family: Traditional Option*: Person-Centered Support (PCS): Family consists of individually tailored training and/or support activities that enable the member to live and inclusively participate in the community in which the member resides, works, receives their 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 their community. 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.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.10.1 *Respite: Agency: Traditional Option* – includes agency services provided by awake and alert staff are specifically designed to provide temporary substitute care normal provided by a family member or a Specialized Family Care Provider. The services are to be used for relief of the primary care-giver(s) to help prevent the breakdown of the primary care-giver(s) due to the physical burden and emotional stress of providing continuous support and care to the dependent member. Respite Services consist of temporary care services for an individual who cannot provide for all of their own needs. 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.

## DISCUSSION

Evidence submitted at the hearing reveals that an I/DD Waiver Program member’s annual budget allocation is determined by his or her assessed needs. The regulations that govern the Medicaid I/DD Waiver Program stipulate that PCS-Family, Respite and EAA-Home services cannot exceed the individualized budget of the recipient unless the member’s needs have changed. Whereas there was no evidence in the April 2, 2015 Second-Level Negotiation Request to indicate the Appellant’s assessed needs have changed, Respondent has acted within regulatory guidelines in its decision to deny the Appellant’s request for services in excess of his current individualized annual budget.

**CONCLUSION OF LAW**

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of PCS-Agency, Respite, and EAA-Home services that exceed his individualized annual budget.

**DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Appellant's Second-Level Negotiation Request for I/DD Medicaid payment of PCS-Agency, Respite and EAA-Home services in excess of the Appellant's individualized budget.

**ENTERED this \_\_\_\_ Day of July 2015.**

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**Thomas E. Arnett  
State Hearing Officer**