



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 22, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2023

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-2023

**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 21, 2015, on an appeal filed May 8, 2015.

The matter before the Hearing Officer arises from the April 3, 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 not present. The Appellant was represented by his guardian, ██████████. Appearing as witnesses for the Appellant were ██████████, Service Coordinator Supervisor with ██████████, Service Coordinator with ██████████ and ██████████, ██████████ Day Program Director. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial, dated April 3, 2015
- D-2 I/DD Waiver Policy Manual, §513.9.1.6
- D-3 I/DD Waiver Policy Manual, §513.9.1.16.2
- D-4 Service Authorization - 2nd Level Negotiation Request, dated March 26, 2015
- D-5 APS Healthcare Purchase Request Details, IDT date November 11, 2014
- D-7 Respondent Rights and Responsibilities, dated September 2, 2014
- D-8 Signature Page, dated September 2, 2014
- D-9 Respondent Rights and Responsibilities, dated September 20, 2013

D-10 Signature Page, dated September 20, 2013

*The denotation "D-6" was omitted in numbering error, there is no Exhibit D-6

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 26, 2015, a second-level request for 5080 units of Facility-Based Day Habilitation 1:1-2, 1160 units of Facility-Based Day Habilitation 1:3-4 and 780 units of Transportation Trips, was submitted on the Appellant's behalf under the I/DD Program. (Exhibits D-1 and D-4)
- 3) The Respondent issued a Notice of Denial on April 3, 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 \$21,172.70. (Exhibits D-4 and D-5)
- 5) The Appellant's current annual budget is \$62,418.88. In order not to exceed the Appellant's assigned annual budget, only 1872 of the requested units of Facility-Based Day Habilitation 1:1-2, 624 units of Facility-Based Day Habilitation 1:3-4, and 280 units of Transportation Trips can be approved by the Department. (Exhibits D-1 and D-5)

APPLICABLE POLICY

West Virginia Medicaid Regulations, §513.9.1.6 states that all units of Facility-Based Day Habilitation services must be 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.

West Virginia Medicaid Regulations, §513.9.1.16.2 states that all units of Transportation Trips 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 \$62,418.88, for the budget year December 1, 2014 through November 30, 2015. The additional requested units of the aforementioned services exceeded the Appellant's annual budget by \$21,172.70, according to the Department's representative.

The Appellant's representative, [REDACTED] (Ms. [REDACTED]) expressed concern that the Appellant would not be able to continue in his day habilitation program. Ms. [REDACTED] testified that the Appellant needs the structure, instruction in basic skills, socialization, life skills, safety skills and nutrition services he receives through the program. She added that the Appellant enjoys the program.

[REDACTED] (Mr. [REDACTED]) testified that the Appellant has received increases in his budget every year since at least 2009, with no major improvement or decline in his condition. Mr. [REDACTED] stated that in the past there had been no need for an appeal of the assigned budget because Service Coordinators were instructed to first purchase and then negotiate services, adding that services had historically been approved.

[REDACTED] testified that the Appellant gleans much from the day habilitation program. He added that he did not know how the Appellant's guardian would be able to maintain her employment if he was unable to attend. He indicated that denial of the additional services would be a losing situation for all parties involved.

The Department's representative suggested that the Appellant's budget could be re-allocated to facilitate the Appellant's participation in day habilitation if they concluded the need was greater than other services the Appellant is currently receiving.

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 and Transportation Trips services that exceed the individualized annual budget was within policy guidelines.

CONCLUSIONS OF LAW

- 1) The requested additional Facility-Based Day Habilitation and Transportation Trips service units would exceed the Appellant's annual budget for the budget year December 1, 2014 through November 30, 2015.

- 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 and Transportation services in excess of the Appellant's individualized budget.

ENTERED this ____ day of July 2015.

Donna L. Toler, State Hearing Officer