



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

July 24, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2111

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,

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-2111

**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 23, 2015, on an appeal filed May 26, 2015.

The matter before the Hearing Officer arises from the March 23, 2015, decision by the Respondent to deny the Appellant additional day habilitation 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 a witness for the Department was Taniua Hardy of the WV Bureau for Medical Services. The Appellant appeared by ██████████, his former service coordinator from ██████████. (██████████) Appearing as witnesses for the Appellant were ██████████, his current service coordinator with ██████████ his brother ██████████ and his nephew ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Second Level Negotiation Request – Notice of Denial dated March 23, 2015
- D-2 WV Medicaid Provider Manual Chapter 513 – I/DD Waiver Services – §513.9.1.6
- D-3 Service Authorization Second Level Negotiation Request, dated March 16, 2015
- D-4 I/DD Waiver Services Purchase Request Details for Budget Year March 1, 2015 to February 29, 2016

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 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 Appellant's Service Coordinator from [REDACTED] submitted a second-level negotiation request (Exhibit D-3) for 6,000 1:1-2 Day Habilitation units and 1:3-4 Day Habilitation units for the budget year of March 1, 2015 through February 29, 2016, on March 16, 2015.
- 3) According to the I/DD Purchase Request Details (Exhibit D-4), the Appellant's budget amount for the current year is \$42,566.26, and he has budgeted \$42,566. The additional Day Habilitation units are \$17,304.22 above budget.
- 4) The Department denied the request, issuing a Notice of Denial for the additional units (Exhibit D-1) on March 23, 2015. The Notice of Denial indicated the Appellant was approved for 2,627 Day Habilitation 1:1-2 units and two Day Habilitation 1:3-4 units. A "unit" equals 15 minutes of service time.
- 5) The Appellant's representative, his then-Service Coordinator from [REDACTED] requested a fair hearing to protest the denial of the request for additional Day Habilitation units.

APPLICABLE POLICY

WV Medicaid Provider Manual Chapter 513, §513.9.1.6 reads as follows in pertinent part regarding Day Habilitation.

Facility-Based Day Habilitation: Traditional Option

Prior Authorization:

All units of service must be prior authorized before [sic] being provided. Prior authorizations are based on assessed need and services must be within the member's individualized budget.

Definition of Service:

Facility-Based Day Habilitation is a structured program that uses meaningful and productive activities designed to promote the acquisition of skills or maintenance of skills for the member outside the residential home. The services must be provided by awake and alert staff and based on assessment, be person-centered / goal-oriented, and

be meaningful/productive activities that are guided by the member's strengths, needs, wishes, desires, and goals.

Facility-based Day Habilitation activities in the plan must be developed exclusively to address the habilitation and support needs of the member. Activities must consist of programs of instruction/training, supervision and assistance, specialist services and evaluations provided by or under the direct supervision of a Therapeutic Consultant or [behavioral services professional] (if applicable).

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.
- The maximum annual units of Facility-based Day Habilitation cannot exceed 6,240 units/1560 hours (Average 6 hours/day) per member's IPP year.

DISCUSSION

I/DD policy limits the amount of Day Habilitation units available to a program participant. The Appellant was approved for 2,627 units of this support category at a 1:1-2 staff-to-member ratio and 2 units at a 1:3-4 staff-to-member ratio for the current budget year which began in March 2015.

The Department's representative testified that according to the I/DD Waiver Services Purchase Request Details (Exhibit D-4), the Appellant's assigned budget for the current budget year is \$42,566.26, while \$42,566 has been budgeted. She stated that if the Department were to approve the full amount of the requested Facility-Based Day Habilitation units, the Appellant would be \$17,304.22 over budget. She added that according to policy, all services must be within the member's individualized budget.

The Appellant's representative testified that it was his understanding the I/DD Program was created as a training program, to help train the members to live as independently as possible. He quoted the WV I/DD Program web site as follows, "The [I/DD Program] provides services that instruct, train, support, supervise and assist individuals who have intellectual disabilities and/or developmental disabilities in achieving the highest level of independence and self-sufficiency possible in their lives. The I/DD Waiver Program provides services in natural settings, homes and communities where the member resides, works and shops, instead of ICF/MR facilities." He stated that the Facility-Based Day Habilitation program lists independent living skills training along with several other life skills trainings, including training in the workplace. He added that according to the Appellant's assessments, independent living was one of the areas on which his treatment team needed to focus, especially since the program increasingly emphasizes moving members into work environments wherever possible.

The Appellant's witness, his current Service Coordinator, testified that the Appellant scored extremely low in the areas of independent living skills and social skills, two important skills for

the workplace as the Appellant moves toward supported employment. She added that the Facility-Based Day Habilitation program was important to the Appellant because repetition was central to his acquisition of life skills. She added that it was very hard to maintain the repetition of life-skill training tasks without the additional units.

The Appellant's representative and witness raised important issues regarding the efforts of his case management team in helping him to reach the highest level of independence and self-sufficiency of which he is capable. However, policy states that ". . . services must be within the member's individualized budget." The Day Habilitation unit increase requested on the Appellant's behalf would exceed his assigned budget by more than \$17,000.

CONCLUSIONS OF LAW

The Appellant's request for additional Day Habilitation units exceeded his yearly budgeted amount. The Department acted correctly to deny the additional units, pursuant to the WV Medicaid Provider Manual, Chapter 513, §513.9.1.6.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's denial of additional Day Habilitation units for the Appellant, in the Title XIX I/DD Waiver program.

ENTERED this 24th day of July 2015

Stephen M. Baisden
State Hearing Officer