



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

August 18, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2122

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-2122

**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 August 17, 2015, on an appeal filed May 22, 2015.

The matter before the Hearing Officer arises from the April 21, 2015, decision by the Respondent to deny the Appellant the full amount of the requested 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 Patricia Nisbet of the WV Bureau for Medical Services. The Appellant appeared by ██████████, his service coordinator with the ██████████. Appearing as witnesses for the Appellant were his mother ██████████, and ██████████, the Appellant's Respite Care worker. 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 21, 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, not dated
- D-4 I/DD Waiver Services Purchase Request Details for Budget Year April 1, 2015 to March 31, 2016
- D-5 I/DD Individualized Waiver Budgeting/Eligibility Assessment Signature Page, dated February 23, 2015

Appellant's Exhibits:

- A-1 Inventory for Client and Agency Planning (ICAP) for Appellant, dated February 23, 2015
- A-2 ICAP for Appellant, dated March 10, 2014

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, the [REDACTED], submitted a request (Exhibit D-3) for 8,320 Person-Centered Support – Agency units for the current budget year.
- 3) The Department denied the request, issuing a Notice of Denial for the units (Exhibit D-1) on April 21, 2015. The Notice of Denial indicated the Appellant was approved for 2,819 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 2819 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 Department’s representative testified that the I/DD program has a finite budget. She testified that everyone on the program is assessed annually, and the information from the assessment is used to generate an individualized budget for each program member. She stated that all purchases of services must be within the member’s individualized budget, unless there has been a change in needs between the time the Department conducted the assessment and the time the Department issued the budget letter.

The Appellant’s request for increased Person-Centered Support – Agency units (Exhibit D-3) reads in part, “[Appellant] requires total care. He enjoys social interaction and the Day Hab[ilitation Program]. Mother is widowed and provides all the care that is needed for [Appellant]. [Appellant] is socially withdrawn. His goal is to spend more time in the community and with his peers at Day Hab.”

The Appellant’s representative submitted as evidence two Inventory for Client and Agency Planning (ICAP) print-outs for the Appellant for the previous two service years (Exhibits A-1 and A-2). These ICAPs indicate that the Appellant’s testing scores in areas such as motor skills, personal living and community living have not changed dramatically in the last three years. The Appellant’s representative stated that the Appellant’s assessed needs have not changed, however he cannot get the services he received last year.

The Appellant’s mother testified that she is a single mother, and the Appellant’s father passed away two years ago. She testified that this was a devastating loss for him. She stated that his father was a caretaker for him, and the loss of his father represented a big change in his schedule which upset him.

The Department’s representative testified that the Department received a request to exceed the Appellant’s assigned budget amount. She stated that she did not see any indications that the Appellant’s health was declining. Therefore, she added, the Department was not able to approve the full amount of Person-Centered Support units requested by the Appellant’s support staff and family.

There can be no dispute that the care for the Appellant presents a great challenge to his mother and to his service agency. However, neither the Appellant’s mother nor his representative

submitted information to indicate that there was a change in his assessed needs, as policy requires. Evidence and testimony indicate that the Appellant's assessed needs and medical condition have not changed in the last several years. The Department acted correctly to deny the request for additional Person-Centered Support units.

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 18th day of August 2015

Stephen M. Baisden
State Hearing Officer