



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 31, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2126

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-2126

**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 30, 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 and goods and services 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 Tania Hardy of the WV Bureau for Medical Services. The Appellant appeared by ██████████, her service coordinator from ██████████. Appearing as witnesses for the Appellant were ██████████, her therapeutic consultant with ██████████ and her mother ██████████. 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 WV Medicaid Provider Manual Chapter 513 – I/DD Waiver Services – §513.9.2.3.1
- D-4 Service Authorization Second Level Negotiation Request, dated March 16, 2015
- D-5 I/DD Waiver Services Purchase Request Details for Budget Year April 1, 2015 to March 31, 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-4) for 3,000 1:1-2 Day Habilitation units, 120 1:3-4 Day Habilitation units and 1,000 Goods and Services units for the budget year of April 1, 2015 through March 31, 2016.
- 3) According to the I/DD Purchase Request Details (Exhibit D-5), the Appellant's budget amount for the current year is \$69,090.59. The requested additional Day Habilitation units and Goods and Services units, if approved, would exceed the Appellant's yearly budget by \$15,304.22.
- 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 73 Day Habilitation 1:1-2 units and the full amount of 120 Day Habilitation 1:3-4 units. She was approved for no Goods and Services units. A "unit" of Day Habilitation equals 15 minutes of service time, and a "unit" of Goods and Services equals one dollar (\$1.00).
- 5) The Appellant's representative, her 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.

WV Medicaid Provider Manual Chapter 513, §513.9.2.3.1 reads as follows in pertinent part regarding Goods and Services.

Goods and Services: *Personal Options Participant-Directed Option*

Prior Authorization:

Prior authorizations are based on assessed need and services must be within the member's individualized participant-directed budget.

Definition of Service:

Participant-Directed Goods and Services (PDGS) are services, equipment or supplies not otherwise provided through this Waiver program or through the Medicaid State Plan that address an identified need in the IPP and meets the following requirements:

- An item or service that would decrease the need for other Medicaid services and/or promote full membership in the community and/or increase member's safety in the home environment.
- The member does not have the funds to purchase the item or service or the item or service is not available through another source.
- This service cannot be accessed as a means of reimbursement for items or services that have already been obtained and not been pre-approved by the Personal Options F/EA.
- Participant-Directed Goods and Services are purchased from the participant-directed budget.
- The need for PDGS [must be] supported by an assessed need documented in the IPP.

- PDGS must be pre-approved by the *Personal Options* F/EA and purchase must be documented by receipts or other documentation of the goods or services from the established business or otherwise qualified entity or individual.
- The need must be documented on the Annual IPP unless it is a new need which must be documented on a Critical Juncture IPP.
- NOTE: All services must be based on assessed need and within a member's individualized budget. If the need was documented on the Annual IPP, but not incorporated into the budget at that time and the member is over budget, then modifications of the services already purchased must occur before this authorization will be approved. If this is a new need, then it should be presented as a need to increase the budget based on a new need.

Limitations/Caps:

- The amount of service is limited by the member's individualized participant-directed budget and spending plan.
- The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.
- The Personal Options provider must not pay PDGS funds to the member, staff or family/legal representative. Payment for cost of services must be issued to the vendor of the PDGS service.
- To access Participant-Directed Goods and Services the member must also access at least one other type of participant-directed service during the budget year – i.e. PCS, Respite and/or transportation.

DISCUSSION

I/DD policy limits the amount of Day Habilitation units available to a program participant. The Appellant was approved for 73 units of this support category at a 1:1-2 staff-to-member ratio and 120 units at a 1:3-4 staff-to-member ratio for the current budget year which began in March 2015. She was approved for no Goods and Services units for the current budget year.

The Department's representative testified that according to the I/DD Waiver Services Purchase Request Details (Exhibit D-5), the Appellant's assigned budget for the current budget year is \$69,090.59. She stated that if the Department were to approve the full amount of the requested Facility-Based Day Habilitation units, the Appellant would be \$15,576.15 over budget. She added that according to policy, all services must be within the member's individualized budget.

The Appellant's representative pointed out that the total amount of approved Day Habilitation units, 73 at 1:1-2 staff-to-member ratio and 120 units at 1:3-4 staff-to-member ratio add up to 193 total units. She stated that at 15 minutes of service time per unit, this equates to about 48 hours of Day Habilitation training for the year.

The Appellant's witness, her Therapeutic Consultant from [REDACTED], testified that the Appellant took an Adaptive Behavior Assessment System (ABAS) assessment in January of 2015. She stated that the areas identified in this assessment wherein the Appellant

scored the lowest and needed the most assistance and training, areas such as communication, community use, functional academics, home living and self-care, are the areas that are most affected by her Day Habilitation training. She stated that in order for the Appellant to participate in her community and to move toward possible supported employment, she needs the Day Habilitation training.

The Appellant's representative and witness expressed valid concerns regarding the training and support needed to assist the Appellant in her community participation and possible employment, however, policy is clear that the Appellant's services available under the I/DD Program is limited by her individualized budget. Since the request for additional Day Habilitation and Goods and Services units are above the Appellant's budget, the Department acted correctly to deny the request for these units.

CONCLUSIONS OF LAW

The Appellant's request for additional Day Habilitation units and Goods and Services units exceeded her 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 and 513.9.2.3.

DECISION

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

ENTERED this 31st day of July 2015

Stephen M. Baisden
State Hearing Officer