



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

August 13, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2130

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-2130

**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 6, 2015, on an appeal filed May 27, 2015.

The matter before the Hearing Officer arises from the May 11, 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 ██████████, Educator/Provider, APS Healthcare. Appearing as a witness for the Department was Taniua Hardy, I/DD Waiver Program Manager, Bureau for Medical Services (BMS). The Appellant was represented by ██████████, Case Manager, ██████████ and ██████████, Advocate, WV Advocates. Appearing as witnesses for the Appellant were ██████████, Direct Care Staff, ██████████ ██████████, RN, ██████████ ██████████ Program Director, ██████████ and ██████████, Adult Protective Services Supervisor, WVDHHR. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated 5/11/15
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.8.1 – Person-Centered Support: Agency: Traditional Option
- D-3 APS Healthcare 2nd Level Negotiation Request dated 4/27/15 – accompanied by Program Habilitation Training Schedule dated 4/7/15 and ██████████ ██████████ IPP Objective Charting Form for April 2015
- D-4 APS Care Connection Authorized services/budget year 5/1/15 – 4/30/16
- D-5 APS Care Connection Authorized services/budget year 5/1/14 – 4/30/15

- D-6 Inventory for Client and Agency Planning (ICAP) dated 2/12/15
- D-7 Inventory for Client and Agency Planning (ICAP) date 2/10/14
- D-8 Signature page acknowledging participation in Appellant's assessment dated 2/12/15
- D-9 Signature page acknowledging participation in Appellant's assessment dated 2/10/14
- D-10 Rights and Responsibilities form signed on 2/12/15
- D-11 Rights and Responsibilities form signed on 2/10/14

Appellant's Exhibits:

- A-1 Supporting clinical documentation (125 pages)

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 2nd Level Negotiation Request (D-3) submitted on April 27, 2015, Respondent notified the Appellant on May 11, 2015 (D-1), that additional units of Person-Centered Support (PCS)-Agency 1:1 & 1:2 were denied. The notice indicates that the request was denied because approval would exceed or has exceeded the member's individualized budget.
- 3) Exhibit D-4 reveals that the Appellant's current individualized annual budget allocation is \$167,186.71. Pursuant to I/DD Waiver Program policy, approvable PCS-Agency service units are limited by the individualized budget. Respondent noted that while 19,075 of the requested 30,720 1:1 PCS-Agency units were authorized, PCS-Agency 1:1 units are more costly, not supported by the Appellant's needs, and appropriate 24-hour care can be provided when combined with the authorized 15,965 PCS-Agency 1:2 service units. Because the Appellant's I/DD Waiver individualized annual budget would have been exceeded by \$30,798.69 if all of the requested PCS-Agency 1:1 units were approved, the request was denied.
- 4) Appellant resides in an Intensively Supported Setting (ISS) home with one roommate. He is blind and non-verbal. Evidence submitted in support of the Appellant's requested 30,720 PCS-Agency 1:1 units being approved includes the argument that he requires 1:1 staffing during the day to facilitate his Program Habilitation Training Schedule (8 a.m. to 11 p.m.) and that he requires 1:1 staffing at night (11 p.m. – 8 a.m.) because he and his roommate do not sleep in close proximity and often do not sleep through the night. In addition, it was noted that his roommate demonstrates hyperactive and elopement behaviors, thereby creating the need for Appellant to have 1:1 staffing.

- 5) Testimony proffered by Respondent's representative's reveals that the requested PCS-Agency 1:1 and 1:2 units would allow for 1:1 staffing of the Appellant for 22.86 hours per day and 1:2 staffing 1.59 hours per day. The requested staffing ratio essentially calls for 1:1 staffing 23 hours per day. Based on his assessed needs, which were affirmed to be accurate by those team members who participated in the APS assessment (D-8 & D-10), the Appellant was authorized (PCS-Agency 1:1 - 19,075 units or 13.1 hours 1:1) and (PCS-Agency 1:2 – 15,965 units or 10.9 hours per day).

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.1 *Intensively Supported Setting (ISS)* - is a residential home setting that is not licensed by the Office of Health Facility and Licensure with one to three adults living in the home. The member's name is either on the lease or the member pays rent. No biological, adoptive or other family members reside in the home setting with the member. An exception would be when siblings who are also I/DD Waiver members reside in a setting without any other family members.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.8.1 *Person-Center Support: Agency: Traditional Option* – requires that all units of service 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 regulations further stipulate that Person-Centered Support (PCS) services consist of individually tailored training and/or support activities provided by awake and alert staff that enables 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. Policy goes on to state that while the annual budget allocation may be adjusted (increased or decreased) if changes have occurred regarding the member's assessed needs, the amount of [PCS-Agency] services is limited by the member's individualized budget.

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-Agency service units cannot exceed the individualized budget of the member unless the member's assessed needs have changed. The evidence submitted in this case reveals that the Appellant's authorized PCS-Agency units are appropriate for his needs, but that the request for additional PCS-Agency service units in excess of the Appellant's budget appear to be based upon his current residential setting and the needs/behaviors of the Appellant's roommate. Furthermore, supporting documentation submitted with the 2nd Level Negotiation Request reveals that the Appellant's Program Habilitation Training Schedule allows for "sleep time" (11 p.m. - 7 a.m.), which occupies eight (8) hours

daily. While it was noted that the Appellant may sometimes awaken during the night, justification for the requested 1:1 staffing of 23 hours per day is clearly not supported. Specific to Appellant's argument that it is the Respondent's responsibility to demonstrate improvement from the previous year, the evidence reveals that the Appellant's actual budget increased by almost \$2,000 (D-4 & D-5), and while the Respondent did not follow policy when it authorized services in excess of the Appellant's 5/1/14 - 4/30/15 budget, the Board of Review is bound by policy. Whereas there is no evidence to indicate the Appellant's assessed needs have changed, Respondent has acted within regulatory guidelines in its decision to deny the Appellant's 2nd Level Negotiation Request to exceed his individualized budget.

CONCLUSIONS 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 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 2nd Level Negotiation Request for IDD Medicaid payment of PCS-Agency services in excess of the Appellant's individualized budget.

ENTERED this ____ Day of August 2015.

**Thomas E. Arnett
State Hearing Officer**