



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 10, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2137

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-2137

**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 ██████████, Provider/Educator, APS Healthcare. Appearing as a witness for the Department was Taniau Hardy, IDD Waiver Program Manager, Bureau for Medical Services (BMS). The Appellant was represented by ██████████, Service Coordinator, ██████████. Appearing as witnesses for the Appellant were ██████████, Appellant's mother, and ██████████, Appellant's former Behavior Support Specialist, ██████████. 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*, §513.9.1.8.2 – Person-Centered Support: Family: Traditional Option
- D-3 APS Healthcare 2nd Level Negotiation Request dated 5/6/15
- D-4 Care Connection Consumer Snapshot - Authorized services/budget year 5/1/15 – 4/30/16

- D-5 Care Connection Consumer Snapshot - Authorized services/budget year 5/1/14-4/30/15
- D-6 Inventory for Client and Agency Planning (ICAP) dated 3/27/15
- D-7 Inventory for Client and Agency Planning (ICAP) dated 3/11/14
- D-8 Signature Page from meeting with West Virginia Service Support Facilitator dated 3/27/15
- D-9 Signature Page from meeting with West Virginia Service Support Facilitator dated 2/11/14
- D-10 Rights and Responsibilities - signed on 3/27/15
- D-11 Rights and Responsibilities - signed on 3/11/14

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 May 6, 2015, Respondent notified the Appellant on May 11, 2015 (D-1) that additional units of Person-Centered Support-Family (PCS-Family) were denied. The notice indicates that the request was denied because approval would exceed or has exceeded the member's individualized budget.
- 3) Appellant's current individualized annual budget allocation (D-4) was set at \$59,900.16. Respondent noted that pursuant to I/DD Waiver Program policy, approvable service units of PCS-Family services are limited by the individualized budget. Because the Appellant's I/DD Waiver individualized annual budget would have been exceeded by \$14,435.54 if all the requested units were approved, the request was denied.
- 4) Appellant's representatives contended that the Appellant required hospitalization in October 2014 due to his aggressive behaviors and reported that his maladaptive behaviors continue to require more PCS-Family than currently authorized. PCS units were reviewed by the treatment team and because Appellant's mother is employed outside of the home, PCS-Agency units could not be reduced to free up money for PCS-Family services. Moreover, Appellant's current budget was reduced from the previous year (D-5) by almost \$10,000, and his current Inventory for Client and Agency Planning (ICAP) scores (D-6) reflect clinical regression when compared to the previous year (D-7). Respondent acknowledged that the Appellant's budget has been reduced from the previous year, but indicated the ICAP is just one of several factors considered when developing the budget. Moreover, Respondent noted that the Appellant's treatment team members signed Exhibits D-8 and D-10 indicating that they were comfortable with the answers provided to, and documented by, the APS Healthcare Service Support Facilitator and that all team members

understood their rights and responsibilities as a respondent during the Appellant's assessment.

- 5) PCS-Agency units were authorized to allow for 5.7 hours per day (7 days per week) or 8 hours per day (5 days per week) of services. Respondent noted that as an alternative, the Appellant could receive more PCS services through the personal options model, if selected, because the reimbursement rate is at a lower amount, thereby maximizing the Appellant's budget. Respondent indicated that the IDD Program cannot provide for 24-hour care, and it is expected that individuals who reside in the home will provide informal support that is not reimbursed by the IDD Waiver Program.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.8.2 *Person-Center Support: Family: Traditional Option*: Person-Centered Support (PCS): Family consists of individually tailored training and/or support activities that enable 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. 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.

DISCUSSION

Evidence submitted at the hearing reveals that an I/DD Waiver Program member's annual budget allocation is determined by his/her assessed needs. The regulations that govern the Medicaid I/DD Waiver Program stipulate that PCS-Family services cannot exceed the individualized budget of the recipient unless the member's needs have changed. Whereas there was no evidence in the May 6, 2015 2nd Level Negotiation Request to indicate the Appellant's assessed needs have changed, Respondent has acted within regulatory guidelines in its decision to deny the Appellant's request for services in excess of his current individualized annual budget.

CONCLUSION OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of PCS-Family 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 I/DD Medicaid payment of PCS-Family services in excess of the Appellant's individualized budget.

ENTERED this ____ Day of August 2015.

**Thomas E. Arnett
State Hearing Officer**