



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 17, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-2138

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-2138**

**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 12, 2015, on an appeal filed May 27, 2015.

The matter before the Hearing Officer arises from the May 12, 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 ██████████, APS Healthcare. Appearing a witness for the Respondent was Tania Hardy, Bureau for Medical Services (BMS). The Appellant was represented by ██████████, Service Coordinator, ██████████. Appearing as witnesses for the Appellant were ██████████, Director, ██████████; and ██████████, Therapeutic Consultant, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated May 12, 2015
- 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 2<sup>nd</sup> Level Negotiation Request dated 5/1/15
- 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 2/26/15
- D-7 Inventory for Client and Agency Planning (ICAP) dated 3/5/14
- D-8 Signature page acknowledging participation with APS Service Support Facilitator conducting Individualized Waiver Budgeting/Eligibility Assessment on 2/26/15

- D-9 Signature page acknowledging participation with APS Service Support Facilitator conducting Individualized Waiver Budgeting/Eligibility Assessment on 3/5/14
- D-10 Annual Individualized Waiver Budget/Eligibility Rights and Responsibilities acknowledgement dated 2/26/15
- D-11 Annual Individualized Waiver Budget/Eligibility Rights and Responsibilities acknowledgement dated 3/5/14

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 2<sup>nd</sup> Level Negotiation Request (D-3) submitted on May 1, 2015, Respondent notified the Appellant (D-1) that additional units of Person-Centered Support (PCS)-Agency 1:1, 1:2, 1:3 and 1:4, as well as Day Habilitation (Day Hab) units 1:1-2 and 1:3-4 were denied. The notice indicates that the requests were 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 \$121,796.76. Pursuant to I/DD Waiver Program policy, approvable PCS-Agency and Day Hab service units are limited by the individualized budget. Respondent noted that while a total of 27,540 PCS-Agency units were requested and approved, the PCS-Agency 1:1 and 1:2 units requested are more costly, not supported by the Appellant's needs, and indicated appropriate care can be provided with additional PCS-Agency 1:3 and 1:4 service units. Respondent further indicated that the Appellant's request for Day Hab service units was similarly approved in the authorization of services – 6,240 Day Hab units were requested and approved, however, Day Hab 1:1-2 was authorized at 500 units (4,992 requested) and Day Hab 1:3-4 was authorized at 5,740 units (1248 requested). Because the Appellant's I/DD Waiver individualized annual budget would have been exceeded by \$23,796.76 if the requested PCS-Agency and Day Hab units were approved as requested, the 2<sup>nd</sup> Level Negotiation Request was denied.
- 4) Appellant's representatives contended that it would be difficult to provide the level of care required by the Appellant with the number of Day Hab and PCS-Agency units approved. Appellant's budget has increased from the previous year (D-5) due to an increase in medical needs and behavioral issues, and he is a fall risk when ambulating. In addition, the Appellant does not always want to do what his roommates are doing, and this is when other staffing arrangements must be made to provide for appropriate staffing and care.

- 5) Respondent cited Exhibits D-6 and D-7 and acknowledged that the Appellant's ICAP Service score decreased from the previous year and that his service level score reduced from a 4 to a 3 - indicating clinical regression – noting that change is reflected in the increase in his annual budget by \$7,361.07. Respondent noted that while the Appellant's maladaptive scores did slightly regress, they did not have any bearing on his budget because the change was so small that it did not reflect a clinical change for services. In addition, Respondent noted that members selected to participate and respond to the APS facilitator during the annual assessment signed Exhibits D-8 and D-10, indicating that the assessment was accurate and that they understood the rights and responsibilities during the assessment process.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.6 *Facility-Based Day Habilitation: Traditional Option*: Facility-Based Day Habilitation is a structured program that use 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. 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.

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 and Day Hab service units cannot exceed the individualized budget of the member unless the member's assessed needs have changed. Because the Board of Review is bound by policy, and 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 2<sup>nd</sup> 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 and Day Hab 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 2<sup>nd</sup> Level Negotiation Request for IDD Medicaid payment of PCS-Agency and Day Hab services in excess of the Appellant's individualized budget.

**ENTERED this \_\_\_\_ Day of August 2015.**

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**Thomas E. Arnett**  
**State Hearing Officer**