STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin   **BOARD OF REVIEW**   **Karen L. Bowling**
Governor   **2699 Park Avenue, Suite 100**   **Cabinet Secretary**
Huntington, WV 25704

August 31, 2015

████████████████████   <u>**E-mail delivery to all parties**</u>

       RE: ████████████ v. WV DHHR
            ACTION NO.: 15-BOR-2214

Dear Ms. ██████

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,

                Todd Thornton
                State Hearing Officer
                Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
          Form IG-BR-29

cc: Taniua Hardy, Department Representative

███████████,

       Appellant,

v.   **Action Number: 15-BOR-2214**

**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 28, 2015, on an appeal filed June 5, 2015.

The matter before the Hearing Officer arises from the May 29, 2015 decision by the Respondent to deny or reduce the Appellant's services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by ███████ and Taniua Hardy. The Appellant was represented by ███████. Appearing as witnesses for the Appellant were ███████, ███████, ███████, ███████, and ███████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of decision, dated May 29, 2015
D-2 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.8.1
D-3 Service Authorization second-level request form, dated April 29, 2015
D-4 Screen prints from the Respondent's data system detailing the Appellant's itemized budget for the budget year beginning May 1, 2015

Appellant's Exhibit:

> A-1   Behavioral graph for Appellant; Incident reports for Appellant; Service Authorization second-level request form, dated April 29, 2015; Behavior plan for Appellant

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 I/DD Waiver Program.

2)   The Appellant submitted a second-level negotiation request for services through the I/DD Waiver Program on April 29, 2015 (Exhibit D-3). The specific services requested were 34,846 units of Person-Centered Support – Agency ("PCS-A") in a 1:1 ratio (the ratio of agency worker to participants), 208 PCS-A units in a 1:2 ratio and 180 units of PCS-A in a 1:3 ratio.

3)   The Respondent notified the Appellant of its decision to deny the full amount of requested service units, offering the reason for denial as "…approval would exceed or has exceeded the member's Individualized Waiver Budget." (Exhibit D-1)

4)   The Respondent's notification to the Appellant indicated that PCS-A services were approvable in the amounts of 17,640 units in a 1-1 ratio, 4,360 units in a 1-2 ratio and 13,040 units in a 1-3 ratio. (Exhibit D-1)

5)   The full amount of units requested would result in the Appellant exceeding his assigned budget for the year starting May 1, 2015, and the approvable units represent a maximized combination of PCS-A services that can be purchased within the confines of the Appellant's assigned budget. (Exhibit D-4)

APPLICABLE POLICY

The policy regarding prior authorization of units of service through the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services. At §513.9.1.8.1, this policy reads, "The amount of service is limited by the member's individualized budget."

DISCUSSION

Policy for the I/DD Waiver Program requires services to an approved individual be limited by that individual's budget. The full amount of services requested by the Appellant would exceed his assigned budget, and the amount deemed approvable by the Respondent represents a maximized number of units in those categories that would keep the Appellant under budget.

It should be noted that the Appellant made several arguments related to the budget itself. Although the initial hearing request made no mention of this issue, the matters are necessarily connected because this is the basis of the Respondent's denial. However, the Board of Review does not hear matters that are solely disputes of policy. The process, or algorithm, used by the Respondent to determine the Appellant's individualized budget is policy. The fact that the Appellant was routinely approved for services that exceeded his budget in the past does not change the fact that policy prohibits this; it simply underscores the Respondent's selective enforcement of their own policy in the past.

The Respondent is correct to deny the Appellant's request for services that would exceed the Appellant's assigned budget.

CONCLUSION OF LAW

Because the Appellant's request for services through the I/DD Waiver Program would cause him to exceed his assigned budget, the Respondent must deny the Appellant's request.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's denial of Appellant's request for second-level services through the I/DD Waiver Program.

ENTERED this ____Day of August 2015.

_____
Todd Thornton
State Hearing Officer