



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

August 31, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2220

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,

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

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW**

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2220**

**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 11, 2015, on an appeal filed June 8, 2015.

The matter before the Hearing Officer arises from the May 27, 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. ██████████ observed but did not participate in the hearing. 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 27, 2015
- D-2 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.6
- D-3 Service Authorization second-level request form, dated May 14, 2015; Documentation accompanying the request
- D-4 Screen prints from the Respondent's data system detailing the Appellant's itemized budget for the budget year beginning May 1, 2015
- D-5 Budget Assessment signature page, dated February 27, 2015
- D-6 Budget Assessment signature page, dated February 17, 2014
- D-7 Rights and Responsibilities form, dated February 27, 2015

D-8 Rights and Responsibilities form, dated February 17, 2014

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 May 14, 2015 (Exhibit D-3). The specific services requested were 5,011 units of Facility Based Day Habilitation (“FBDH”).
- 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 FBDH services were approvable in the amount of 3,800 units. (Exhibit D-1)
- 5) The full amount of units requested would result in the Appellant exceeding her assigned budget for the year starting May 1, 2015, and the approvable units represent a maximized amount of FBDH units that can be purchased within the confines of the Appellant’s assigned budget. (Exhibit D-4)
- 6) The Appellant’s budget was reduced by \$2,018.94 from the May 2014 budget year (\$46,902.95) to the May 2015 budget year (\$44,884.01).
- 7) The per-unit cost of FBDH services is \$4.98.

**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 §513.9.1.6, 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

her 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. The burden is on the Respondent to justify a decision to reduce or deny services. The budget is naturally in this category as it represents a cap on the amount of services approvable for an individual. However, the Respondent failed to make the case for their reduction and the Appellant failed to make a contrary case. Testimony on the Appellant's behalf in this area was primarily that "service scores" for the Appellant went down in the same period that the Respondent reduced the Appellant's budget. It should additionally be noted that the budget approved for the Appellant in the previous budget year would not cover the requested FBDH units, had the case been made to reverse the Respondent's budget reduction.

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 her to exceed her 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.**

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**Todd Thornton  
State Hearing Officer**