



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
P.O. Box 1247  
Martinsburg, WV 25402

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

August 11, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2253

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 Official 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,

Lori Woodward  
State Hearing Official  
Member, State Board of Review

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

cc: Kimberly Stitzinger-Jones, Esq.

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2253**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICIAL**

**INTRODUCTION**

This is the decision of the State Hearing Official 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 30, 2015, on an appeal filed June 11, 2015.

The matter before the Hearing Official arises from the May 26, 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 was represented by counsel, Kimberly Stitzinger-Jones. Appearing as witnesses for the Department were ██████████ with APS Healthcare, Tania Hardy and Pat Nesbitt with the Bureau for Medical Services (BMS). The Appellant was represented by counsel, ██████████. Observing, but not participating in the hearing were ██████████ with ██████████ Executive Director, and ██████████, TBI Program Manager. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 I/DD Waiver Policy Manual, §513.9.1.10.1
- D-2 Signature Page, Individualized Budget Waiver Budgeting/Eligibility Assessment, dated February 9, 2015
- D-3 2<sup>nd</sup> Level Negotiation Request, dated May 14, 2015
- D-4 Notice of Denial, dated May 26, 2015
- D-5a Services Authorized for Service Year May 1, 2015 – April 30, 2016
- D-5b Services Authorized for Service Year May 1, 2014 – April 30, 2015

- D-6a Inventory for Client and Agency Planning (ICAP), dated February 9, 2015
- D-6b Inventory for Client and Agency Planning (ICAP), dated March 10, 2014

**Appellant's Exhibits:**

- A-1 Hearing/Grievance Request Notification, IG-BR-29

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 Official sets forth the following Findings of Fact.

**FINDINGS OF FACT**

- 1) The Appellant is a recipient of the I/DD Waiver Program (Program). A second-level request for 3836 units for Person Centered Support - Agency (1:1), 100 units for Person Centered Support - Agency (1:2), 10,463 units for Person Centered Support - Family (1:1), 6220 units for Respite – Agency (1:1), and 92 units for Respite – Agency (1:2) under the Program was submitted for the Appellant on May 14, 2015. (Exhibit D-3)
- 2) The Respondent issued a Notice of Denial (Notice) on May 26, 2015, approving all the above noted requested units except for the Respite – Agency (1:1). The Notice indicated that all but 365 units of the total requested units of 6220 for Respite - Agency (1:1) were denied because the approval of the additional requested units would exceed or have exceeded the member's Individualized Waiver Budget. (Exhibit D-4)
- 3) A Program member undergoes a functional assessment each year to determine the member's assigned budget for the upcoming budget year.
- 4) The Appellant underwent her Annual Functional Assessment (ICAP) on February 9, 2015. (Exhibit D-6a)
- 5) The Appellant's 2015 ICAP showed a decrease in her adaptive behavior scores in 4 out of the 5 categories since the previous assessment done in 2014. Additionally, her maladaptive behavior scores were noted to be decreased in the categories of asocial and general when compared to the 2014 assessment. (Exhibits D-6a & D-6b)
- 6) The Appellant's budget is \$62,162.76 for the current assigned budget year, May 1, 2015 – April 30, 2016. (Exhibit D-5a)
- 7) The Appellant's assigned budget for May 1, 2014 – April 30, 2015 equaled \$65,900.90. (Exhibit D-5b) The Appellant exceeded her 2014 assigned budget by \$25,593.97.

- 8) The Appellant's assigned budget was decreased by \$3,738.14 from the 2014 assigned budget.
- 9) The Notice sent to the Appellant informed her that the reviewer relied upon the following documents in the Respondent's determination of services: I/DD Waiver Policy, second-level request dated 5/14/15 (Exhibit D-3), service request for service year 5/1/2015 – 4/30/2016 (Exhibit D-5a), service request for service year 5/1/2014 – 4/30/2015 (Exhibit D-5b), Annual Functional Assessments (ICAP) administered 2/9/2015 (Exhibit D-6a) and 3/10/2014 (Exhibit D-6b), signature sheets dated 2/9/2015 (Exhibit D-2) and 3/10/2014, and Rights and Responsibility form dated 2/9/2015 and 3/10/2014.
- 10) The Respondent based the denial of the full amount of requested Respite – Agency (1:1) service units solely on the fact that the requested units were not within her current annual budget.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, §513.9.1.10.1, state 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 budget allocation may be adjusted only if changes have occurred regarding the member's assessed needs.

### **DISCUSSION**

It was agreed by counsel at the onset of the hearing that the issue at hand was the denial of the Appellant's requested 2660 units of Respite – Agency (1:1), of which only 365 units were approved, based on a finding that approval of all 2660 units would exceed or has exceeded the Appellant's current Individualized Waiver Budget of \$62,162.76. Budget calculation methodology was not at issue for this hearing.

Taniua Hardy (Ms. Hardy), Bureau for Medical Services (BMS) I/DD Waiver Program Manager, reviewed the Appellant's second-level request and made a determination that approving the additional Respite units beyond 365 units would exceed the Appellant's current annual budget. Although Ms. Hardy noted that she relies on the different behavior scores included in the ICAP in addition to the Service Score, she was unclear as to whether she actually assessed the Appellant's needs in her denial. Ms. Hardy failed to offer an explanation as to her reason for the denial of the additional Respite – Agency (1:1) service units despite the decrease in the Appellant's ICAP behavioral scores from the previous year and the decrease in the Appellant's current annual budget other than the additional services were denied because it would exceed the Appellant's current annual budget.

Although there are many gray areas in the Medicaid policy for this Program, policy is clear that a Program member must stay within the assessed annual budget. Policy is also clear that increases or decreases in a member's budget may be determined by the Respondent if there have been

changes in the member's assessed needs. [REDACTED] with APS Healthcare (APS), the agency empowered by BMS to administer the Program, testified that a member's yearly assessment was used to determine the amount of the member's budget. BMS makes the final determinations of second-level requests. In this second-level request, the Appellant's current and previous years' Annual Functional Assessments are used to determine prior authorization for service units.

The evidence showed that the Appellant's Annual Functional Assessments (ICAP) indicated a decline in her functioning from the previous year, yet APS decreased the Appellant's current budget by \$3,738.14 from her 2014 assigned budget. Although budget calculation methodology was not at issue, the Respondent failed to present any evidence to show that it considered the Appellant's needs or that the Appellant's Annual Functional Assessments were reviewed and considered as noticed in the denial of the total requested Respite – Agency (1:1) service units.

### **CONCLUSIONS OF LAW**

- 1) Policy permits a participant's budget to be adjusted in circumstances where the participant demonstrates an increased need.
- 2) It is unclear by the evidence presented whether the Respondent considered the Appellant's Annual Functional Assessments (ICAP) administered February 9, 2015 and March 10, 2014, which showed a decrease in her functioning, in its decision to deny the Appellant's second-level negotiation request.

### **DECISION**

It is the decision of the State Hearing Official to hereby **REMAND** the matter to the Respondent for re-evaluation of the Appellant's May 14, 2015 second-level negotiation request to include the Appellant's Annual Functional Assessments (ICAP) administered February 9, 2015 and March 10, 2014. Following the re-evaluation, the Department shall notify the Appellant of its decision, which shall include the right to a Fair Hearing.

**ENTERED this 11<sup>th</sup> day of August 2015.**

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**Lori Woodward, State Hearing Official**