



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

Earl Ray Tomblin  
Governor

BOARD OF REVIEW  
416 Adams St., Suite 307  
Fairmont, WV 26554

Karen L. Bowling  
Cabinet Secretary

September 17, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-2445

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-2445**

**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 September 17, 2015, on an appeal filed July 1, 2015.

The matter before the Hearing Officer arises from the June 29, 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 ██████████, Registration Coordinator, APS Healthcare. Appearing as a witness for the Department was Taniua Hardy, IDD Waiver Program Manager, Bureau for Medical Services (BMS). The Appellant was represented by his mother/guardian ██████████. Appearing as witnesses for the Appellant were ██████████, Case Manager Supervisor, ██████████ and ██████████, Program Manager, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated June 29, 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 5/26/15
- D-4 APS Care Connection - authorized services/budget year 6/1/15 – 5/31/16

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 26, 2015, Respondent notified the Appellant (D-1) that additional units of Person-Centered Support (PCS)-Agency 1:1 were denied. The notice indicates that the request was 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 \$38,795. Pursuant to I/DD Waiver Program policy, approvable PCS-Agency service units are limited by the individualized budget. Respondent indicated that the 11,680 PCS-Agency 1:1 units requested (8 hours per day) are neither supported by the Appellant's needs assessment, nor the 2<sup>nd</sup> Level Negotiation Request (D-3), and would have resulted in the Appellant exceeding his individualized budget by \$24,624.15. Respondent noted that the IDD Waiver program is designed to provide support services in the natural family setting, and that the Appellant's current budget reflects an increase in excess of \$5,500 from the previous year. As a result, the Appellant was approved for 6,765 (4.26 hours per day) of PCS-Agency units.
- 4) Appellant's mother/guardian and representative, [REDACTED], contended that she has several medical issues, and without the 8 hours per day of PCS-Agency services, her son's access to the community is limited. Appellant's representative purported that Appellant used over \$82,000 in PCS-Agency services (10 hours per day) in the previous year.
- 5) Tania Hardy proffered testimony to indicate that she could not explain why the Appellant received PCS-Agency services at the level he previously did, as she was not the I/DD Waiver Program Manager at that time and existing policy has been in effect since 2011. Ms. Hardy noted that the I/DD Waiver Program exceeded its budget by more than 50 million dollars in the previous year, and that continued spending in excess of the individualized member's budget jeopardizes the services provided to all if its members.

### **APPLICABLE POLICY**

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 service units cannot exceed the individualized budget of the member unless the member's assessed needs have changed. Information submitted in support of additional PCS-Agency services is based on the reported medical issues of the Appellant's mother and her inability to provide the level of informal supports she believes her son requires. However, testimony proffered at the hearing reveals that the Appellant's assessed needs indicated additional informal supports were available, and there was no evidence submitted to indicate the medical condition of the Appellant's mother would warrant PCS-Agency services in excess of the authorized 6,765 units (4.26 hours per day). 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 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 I/DD Medicaid payment of PCS-Agency services in excess of the Appellant's individualized budget.

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

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**Thomas E. Arnett  
State Hearing Officer**