



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 9, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2509

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 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,

Donna L. Toler
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-2509

**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 9, 2015, on an appeal filed July 7, 2015.

The matter before the Hearing Officer arises from the February 6, 2015 decision by the Respondent to approve the Appellant's Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program individual assigned budget in the amount of \$77,850.30.

At the hearing, the Respondent appeared by Taniua Hardy, Bureau for Medical Services (BMS). Appearing as a witness for the Department was ██████████, APS Healthcare. The Appellant was present. The Appellant was represented by ██████████, Service Coordinator Supervisor with ██████ by request of the Appellant's guardian, ██████████, also present. Appearing as witnesses for the Appellant was ██████████, ██████████, Service Coordinator with ██████ ██████████, Day-Hab Supervisor with ██████████, and ██████████, Therapeutic Consultant with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

None

Appellant's Exhibits:

None

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.

Prior to the hearing in this matter, the Department presented its Motion to Dismiss, on the grounds that the establishment of the budget is a matter of policy. However, the Appellant's budget was decreased from 2014 to 2015 by \$6,341.09. The Appellant contended that there was no change in his condition from the previous year which would warrant a decrease in his assessed budget. The Appellant is entitled to a fair hearing when he/she has received a decrease in benefits. The Department's Motion to Dismiss was denied.

FINDINGS OF FACT

- 1) The Appellant is a recipient of benefits and services through Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program (I/DD Program).
- 2) A Program member undergoes a functional assessment each year to determine the member's assigned budget for the upcoming budget year.
- 3) On February 6, 2015, the Appellant was notified that his budget for the upcoming year was assessed at \$77,850.30.
- 4) The Appellant's assigned budget for the prior budget year was \$84,191.39.
- 5) The Appellant's current assigned budget was decreased by \$6,341.09 from the prior year's assigned budget.
- 6) In the previous budget year the Appellant was diagnosed with dementia, which resulted in an approval for increased services.
- 7) In the current budget year the diagnosis of dementia did not appear to be a factor which was considered at the time of the annual assessment.

APPLICABLE POLICY

West Virginia Medicaid Regulations, §513.4.1 states that the individual budget calculation is determined by the Administrative Services Organization (ASO) and is based on the member's assessed needs.

DISCUSSION

The Appellant's witnesses testified that the Appellant has not had an improvement in his condition and that his assessed budget should not have decreased.

The Department provided testimony that the Appellant's budget may have decreased due to a change in maladaptive scores and service level scores. However, the Department testified that the increased scores did not demonstrate a significant improvement. It should be noted that the Department provided no physical evidence of the change in scores, as no exhibits were introduced by the Department in the hearing of this matter. The Department's witness testified that because she was not a psychologist she was unable to interpret the Appellant's assessment results.

According to testimony provided by the Department, the annual assessed budget is determined by a number of factors, including the annual functional assessment and medical diagnoses. The Department testified that if an individual was previously diagnosed with a medical condition, unless that condition had been resolved, it should be considered in subsequent annual assessments. In 2014, the Appellant was diagnosed with dementia and because of the diagnosis was approved for additional services over his assigned budget. The Department's representative testified that there was no indication that the diagnosis of dementia was considered in the Appellant's assigned budget for the current year.

CONCLUSIONS OF LAW

- 1) Per policy the Appellant's budget allocation assessed by the ASO is based on the member's assessed needs.
- 2) It is unclear by the evidence presented whether the Respondent considered the Appellant's diagnosis of dementia in its assignment of his current assessed budget.

DECISION

It is the decision of the State Hearing Official to **remand** the matter to the Respondent for re-evaluation of the Appellant's current assigned annual budget to include the Appellant's diagnosis of dementia. Following the re-evaluation, the Department shall notify the Appellant of its decision, which shall include the right to a Fair Hearing.

ENTERED this 9th day of September 2015.

Donna L. Toler, State Hearing Officer