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

October 13, 2015

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 15-BOR-2703

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,

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

[redacted],

Appellant,

v. **Action Number: 15-BOR-2703**

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 [redacted]. 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 October 8, 2015, on an appeal filed August 3, 2015.

The matter before the Hearing Officer arises from the July 27, 2015 decision by the Respondent to deny Appellant's request for Medicaid I/DD Waiver Program services that exceed her individualized budget.

At the hearing, the Respondent appeared by [redacted], APS Healthcare. Appearing as a witness for the Respondent was Taniua Hardy, Bureau for Medical Services (BMS), WVDHHR. The Appellant was represented by [redacted], Service Coordinator, [redacted]. Appearing as witnesses for the Appellant were [redacted], Appellant's guardian; [redacted], Day Habilitation Therapeutic Consultant, [redacted]; and [redacted] Day Treatment Supervisor, [redacted]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice of Denial dated 7/27/15
D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.2.3.2 – Person-Centered Support: Personal Options, Participant-Directed Option
D-3 APS Healthcare 2nd Level Negotiation Request dated 5/29/15
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 2nd Level Negotiation Request (D-3) submitted on May 29, 2015, Respondent notified Appellant (D-1) that the request for additional units of Person-Centered Support (PCS): Personal Options Participant-Directed Option – was denied. The notice indicates that the request was denied because approval would exceed or has exceeded the member's individualized budget.

3) Appellant, through her representatives, cited the clinical justification documented on the 2nd Level Negotiation Request and indicated that the Appellant has traditionally received the number of PCS units requested (11,512) and that her ICAP and ABAS-II results demonstrate a functional decline.

4) Respondent's representatives acknowledged that the clinical documentation submitted for review demonstrates a decline in the Appellant's functional ability, and as a result, her individualized budget actually increased from the previous year by just over $2,100. Respondent noted, however, that the I/DD Waiver Program exceeded its budget in the previous year, and while the Bureau for Medical Services (BMS) allowed individuals to exceed their individualized budget in previous years, the additional money is no longer available. Respondent's representative proffered testimony to indicate that the approved number of PCS units (3,630) is consistent with the information on the needs assessment, and is the maximum amount that can be approved within Appellant's budget. If the full amount of requested PCS units would have been granted, Appellant would have exceeded her individualized budget by more than $21,500.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.2.3.2 Person-Centered Support (PCS): Personal Options, Participant-Directed Option – states that prior authorizations [for PCS] are based on assessed needs, and services must be within the member's individualized participant-directed budget. The annual budget for participant-directed services is determined following the purchase of Traditional Services. PCS is provided by awake and alert staff and consists of individually tailored training and/or support activities that enable 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 behaviors that are necessary for the member to have greater independence, personal choice and allow for maximum inclusion into their community. The amount of the services is limited by the member's individualized participant-directed budget and spending plan.

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 evidence submitted in this case reveals that the Appellant's request for additional PCS service units is in excess of the individualized participant-directed budget. While Respondent may have been authorized to grant additional units in previous budget years, the Board of Review is bound by policy, and Respondent has acted within regulatory guidelines.

CONCLUSIONS OF LAW

The evidence submitted at the hearing affirms the Respondent's decision to deny the Appellant's request for prior authorization of PCS services that exceed her individualized annual budget.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's action to deny the Appellant's 2nd Level Negotiation Request for I/DD Medicaid payment of PCS services in excess of the Appellant's individualized participant-directed budget.

ENTERED this____ Day of October 2015.

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Thomas E. Arnett
State Hearing Officer