



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

November 13, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NOS.: 15-BOR-2848; 15-BOR-2859

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matters.

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: Bureau for Medical Services

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

██████████,

Appellant,

v.

**Action Numbers: 15-BOR-2848
15-BOR-2859**

**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 October 27, 2015, on an appeal filed August 19, 2015.

The matter before the Hearing Officer arises from the August 11, 2015 decision by the Respondent to deny or reduce the Appellant's services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program, and the May 13, 2015 decision by the Respondent to establish the Appellant's individualized budget by which those services are limited.

At the hearing, the Respondent appeared by ██████████. Appearing as witnesses for the Respondent were Tania Hardy and April Goebel. 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 August 11, 2015
- D-2 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.10.1
- D-3 Service Authorization second-level negotiation request form, dated July 16, 2015
- D-4 Screen prints from the Respondent's data system detailing the Appellant's itemized budget for the budget year beginning July 1, 2015

Appellant’s Exhibits:

- A-1 Inventory for Client and Agency Planning, dated April 29, 2015 (evaluation date)
- A-2 Respondent Rights and Responsibilities form, signed April 29, 2015
- A-3 Annual Functional Assessment Signature Page, dated May 7, 2014
- A-4 Annual Functional Assessment Signature Page, dated April 29, 2015

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 service through the I/DD Waiver Program on July 16, 2015 (Exhibit D-3). The specific service requested was 5000 units of Respite.
- 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 1996 units of Respite were approvable (Exhibit D-1).
- 5) The full amount of units requested would result in the Appellant exceeding his assigned budget for the year starting July 1, 2015, and the approvable units represent the maximum amount of Respite units that can be purchased within the confines of the Appellant’s assigned budget (Exhibit D-4).
- 6) The factors used to determine the Appellant’s individualized budget were correct.

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 §513.9.1.10.1, this policy reads, “The amount of service is limited by the member’s individualized budget.”

The process used by the Respondent to determine a member’s individualized budget is considered a “proprietary algorithm.” On this basis, the Respondent refuses to provide any policy describing that process, effectively concealing policy from the public. However, the

Appellant did not have a dispute of the factors used to determine the individualized waiver budget so the budget matter is not considered.

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 cause him to exceed his assigned budget, and the amount deemed approvable by the Respondent maximizes the amount of Respite services that would keep the Appellant within budget. This hearing additionally addressed a dispute of the Appellant's individualized budget amount, but the Appellant had no dispute of the information used to determine his budget, leaving only policy disputes to consider. The Board of Review does not hear matters that are solely disputes of policy and the process used by the Respondent to determine the Appellant's individualized budget is policy, albeit policy the Respondent explicitly conceals from the public. The Respondent is correct to deny the Appellant's request for services that would exceed the Appellant's assigned budget, and the Respondent's determination of the Appellant's budget is correct.

CONCLUSIONS OF LAW

- 1) Because the factors used to determine the Appellant's individualized budget were correct, the budget itself was correct.
- 2) Because the Appellant's request for services through the I/DD Waiver Program would cause him to exceed his assigned budget, the Respondent must deny the Appellant's request.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's determination of the Appellant's I/DD Waiver budget and to **uphold** the Respondent's denial of the Appellant's second-level request for services through the I/DD Waiver Program.

ENTERED this ____ Day of November 2015.

**Todd Thornton
State Hearing Officer**