



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

November 16, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-2870

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: Pat Nisbet/Taniua Hardy, BMS

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

████████████████████,

**Appellant,**

v.

**Action Number: 15-BOR-2870**

**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 November 9, 2015, on an appeal filed September 8, 2015.

The matter before the Hearing Officer arises from the August 14, 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 ██████████, APS Healthcare. Appearing as a witnesses for the Department were ██████████, RN, APS Healthcare, and Pat Nisbet, Bureau for Medical Services (BMS). The Appellant appeared at the hearing and was represented by ██████████, Service Coordinator, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated 8/14/15
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.12.1 – Skilled Nursing: Licensed Practical Nurse: Traditional Option
- D-3 APS Healthcare 2<sup>nd</sup> Level Negotiation Request dated 7/22/15
- D-4 APS CareConnection Authorized services/budget year 8/1/15 – 7/31/16
- D-5 Inventory for Client and Agency Planning (ICAP) dated 5/8/15

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 July 22, 2015, Respondent notified the Appellant (D-1) that additional units of Skilled Nursing-LPN (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-6 reveals that the Appellant's current individualized annual budget allocation was set at \$153,187.08 – which falls \$5,016.24 short of the funding requested by Appellant for additional LPN (1:1) services. Respondent noted that 2,400 units (1.6 hours per day) of LPN 1:1 services were requested and 1,944 units (1.32 hours per day) were approved, indicating there is not a significant difference. In addition, [REDACTED], a Registered Nurse (RN) employed by APS Healthcare, proffered testimony to indicate that based on Appellant's medication administration needs, 1,944 units of LPN (1:1) services are appropriate. In addition, Nurse [REDACTED] noted that medications could also be administered by an Approved Medication Assistive Personnel (AMAP) employed by [REDACTED]
- 4) Appellant's representative indicated that [REDACTED] does not have an AMAP available for the Appellant, and further reported that he has recently started demonstrating problematic behaviors that make administering his medications more difficult.
- 5) Exhibit D-5 (ICAP) indicates there were no problematic behaviors previously reported that would have affected medication administration, and Exhibit D-3 (2<sup>nd</sup> Level Negotiation Request) indicates that the LPN must administer medications when AMAP is not available.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations - Chapter 513 – §513.9.1.12.1 Skilled Nursing: Licensed Practical Nurse: Traditional Option – Provides that all units of service must be prior authorized. LPN services are based on the member's needs and must be within the member's individualized budget. The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.

## DISCUSSION

Evidence submitted at the hearing reveals that an I/DD Waiver Program member's annual budget allocation is determined based on the member's assessed needs. Respondent's expert witness proffered testimony to indicate that the LPN units approved were appropriate, based on the Appellant's medication administration needs. Although the Appellant's representative reported that an AMAP is not available for the Appellant, the 2<sup>nd</sup> Level Negotiation Request indicates otherwise. The regulations that govern the Medicaid I/DD Waiver Program stipulate that LPN services cannot exceed the individualized budget of the recipient unless the member's needs have changed. While Appellant's representative provided information during the hearing to indicate the Appellant has recently started demonstrating problematic behaviors that complicate administering his medications, this information was neither reported during his needs assessment, nor the 2<sup>nd</sup> Level Negotiation Request. Whereas there was no evidence in the July 22, 2015 request 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 for LPN services in excess of his current individualized annual budget.

## CONCLUSION OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of LPN (1:1) 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 second-level request for I/DD Medicaid payment of LPN services in excess of the Appellant's individualized budget.

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

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**Thomas E. Arnett  
State Hearing Officer**