



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-2967

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**

██████████,

Appellant,

v.

Action Number: 15-BOR-2967

**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 2, 2015.

The matter before the Hearing Officer arises from the August 20, 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 ██████████, APS Healthcare. Appearing as a witness for the Department was Pat Nisbet, Bureau for Medical Services (BMS). The Appellant was represented by ██████████, Service Coordinator, ██████████. Appearing as a witness for the Appellant was Appellant's mother/guardian, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D Bureau for Medical Services Request for Hearing - filed on 9/2/15
- D-1 Notice of Denial dated 8/20/15
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.8.2 – Person-Centered Support: Family: Traditional Option
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.10.1 – Respite: Agency: Traditional Option
- D-4 APS Healthcare 2nd Level Negotiation Request dated 7/6/15
- D-5 Authorized services/budget year 7/1/15 – 6/30/16

Appellant's Exhibits:

- A-1 Budget year 7/1/15-6/30/16 services purchased for Appellant through APS CareConnection, Inventory for Client and Agency Planning (dated 4/1/15) and Extraordinary Care Needs Assessment (dated 4/1/15)
- A-2 Budget year 7/1/14-6/30/15 services purchased for Appellant through APS CareConnection, Inventory for Client and Agency Planning (dated 4/21/14) and Extraordinary Care Needs Assessment (dated 4/21/14)
- A-3 Budget year 7/1/13-6/30/14 services purchased for Appellant through APS CareConnection, Inventory for Client and Agency Planning (dated 4/29/13) and Extraordinary Care Needs Assessment (dated 4/29/13)

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-4) submitted on July 6, 2015, Respondent notified the Appellant (D-1) that additional units of Person Centered Support-Family (PCS-Family) 1:1 and Respite-Agency (1:1) were denied. The notice indicates that the request for PCS-Family was denied because approval would exceed or has exceeded the member's individualized budget, and that additional Respite services requested were not authorized because the services were being provided outside the guidelines (in violation) of the I/DD Waiver Manual.
- 3) Appellant's current budget for service year July 1, 2015 through June 30, 2016, is \$55,831.41 (Exhibits D-5 and A-1) - a decrease of \$418 from the previous year (A-2). Evidence reveals that Appellant was authorized services in excess of her previous budget (A-2), but Respondent indicated it is not authorized to allow individuals to exceed the individualized budget unless there is a changed in the individual's assessed needs. Respondent noted that if all requested services are provided, Appellant will exceed her current budget by \$21,935.26.
- 4) Testimony proffered at the hearing reveals that Appellant's service providers have reduced the amount of services requested from the previous year, which decreased the amount of additional funding in the 2nd Level Negotiation Request by \$13,029.04, but contended that the authorized budget for the current year does not meet Appellant's needs.

- 5) Respondent noted that Appellant's current budget allows for 7.76 hours of service per day, Monday through Friday, and 4.36 hours of services per day on Saturday and Sunday. As a result, Appellant's primary care provider does get some relief (PCS-Agency 3.4 hours per day), and the authorized Respite services (578 units) allow the Appellant to go out in the community and remain within budget. Respondent further noted that Appellant's sister, [REDACTED], is not a certified Specialized Family Care Home provider and cannot be paid for Respite services when the Appellant spends the weekend at Ms. [REDACTED] home. In addition, ICAP and service level scores (Exhibit A-1 and A-2) are consistent with a proposed reduction in Appellant's services.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.8.2 *Person-Center Support: Family: Traditional Option*: Person-Centered Support (PCS): Family 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 behavior that are necessary for the member to have greater independence, personal choice and allow for maximum inclusion into their community. The amount of service is limited by 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.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.10.1 *Respite: Agency: Traditional Option* – includes agency services provided by awake and alert staff are specifically designed to provide temporary substitute care normal provided by a family member or a Specialized Family Care Provider. The services are to be used for relief of the primary care-giver(s) to help prevent the breakdown of the primary care-giver(s) due to the physical burden and emotional stress of providing continuous support and care to the dependent member. Respite Services consist of temporary care services for an individual who cannot provide for all of their own needs. When this service is provided in a home setting other than the member's, the home setting must be a certified Specialized Family Care Home. The amount of service is limited by 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 by his or her assessed needs. The regulations that govern the Medicaid I/DD Waiver Program stipulate that PCS-Family and Respite services cannot exceed the individualized budget of the recipient unless the member's needs have changed. Pursuant to the Medicaid I/DD Waiver Policy Manual §513.9.1.10.1, Respite services can only be provided outside of the member's residence in a certified Specialized Family Care Home. According to

Exhibits D and D-4, and undisputed testimony received at the hearing, Appellant's sister, [REDACTED] is not a certified Specialized Family Care Home provider and cannot be paid for Respite services when the Appellant spends the weekend at Ms. [REDACTED] home. Respondent noted that the Respite units approved are consistent with Appellant's needs and keep the Appellant within her assigned budget. The evidence demonstrates that Respondent has acted within regulatory guidelines in its decision to deny the Appellant's 2nd Level Negotiation Request for PCS-Family and Respite services in excess of her 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 PCS-Family and Respite services that exceed her individualized annual budget.

DECISION

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

ENTERED this ____ Day of November 2015.

**Thomas E. Arnett
State Hearing Officer**