



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 25, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3936

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Pat Nisbet, WV Bureau for Medical Services
Taniua Hardy, WV Bureau for Medical Services

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

██████████,

Claimant,

v.

Action Number: 14-BOR-3936

**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 March 19, 2015, on an appeal filed December 26, 2014.

The matter before the Hearing Officer arises from the December 5, 2014, decision by the Respondent to deny additional units of Person-Centered Support - Personal Options in the Title XIX Intellectual/Developmental Disabilities (I/DD) Waiver Services Program.

At the hearing, the Respondent appeared by ██████████ of APS Healthcare. Appearing as a witness for the Department was ██████████, also of APS Healthcare. The Claimant appeared by his mother ██████████. Appearing as witnesses for the Claimant were ██████████, RN, with ██████████, ██████████, LPN, also with ██████████, and ██████████, Service Coordinator with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Medicaid Provider Manual Chapter 513 – I/DD Waiver Services – §513.9.2.3.2
- D-2 Service Authorization Second Level Negotiation Request, dated November 25, 2014
- D-3 Notice of Denial dated December 5, 2014

Claimant's Exhibit:

- C-1 E-mail from ██████████ to the WV Bureau of Medical Services dated January 5, 2015, with attached nurse recruitment advertisements

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 Claimant is a member of the Title XIX I/DD Waiver Services Program. His Service Coordinator for the program submitted a request for additional units of Person-Centered Support – Personal Options (Exhibit D-2) on November 25, 2014.
- 2) The Department issued a Notice of Denial for the additional units (Exhibit D-3) on December 5, 2014. The Notice of Denial reads as follows: “Your request to exceed the service cap limitations in the current WV I/DD Waiver Manual is denied.”
- 3) The Department’s representative testified that the Claimant’s parents requested 17,520 units of Person-Centered Support – Personal Options. She testified that because the Claimant is eligible to receive federally mandated public education services, policy limits him to 11,680 units per service year. She stated that the Claimant’s parents refused these services, but the Claimant remains eligible for them because he is fourteen years old.
- 4) The Claimant’s representative testified that her son should be approved for 17,520 units under the limitation/cap for members not eligible to receive federally mandated public education services. She testified that her son is not trainable to any degree. She stated that he requires continuous oxygen, requires suctioning in order to keep his airways clear, and has to be manually turned. She stated that he is unreactive to any external stimuli.
- 5) The Department’s representative testified that she understood the Claimant would not benefit from educational services meant to train him in some fashion. However, she added, the Board of Education for the Claimant’s county of residence could provide some type of home therapy services to him.
- 6) The Claimant’s representative testified that she refused public education services because the risk to her son is too great. She testified that her son is medically fragile, with an immune system incapable of defending against viral or bacterial infection. She stated her son is so chemically sensitive that if someone came to her home wearing cologne, scented deodorant or some other scented substance, this would place him in severe respiratory distress.

APPLICABLE POLICY

WV Medicaid Provider Manual Chapter 513, §513.9.2.3.2 reads as follows in pertinent part regarding Person-Centered Support – Personal Options.

Person-Centered Support: *Personal Options*, Participant-Directed Option

Person-Centered Support (PCS) provided by awake and alert staff 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 his/her 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 his/her community.

PCS services must be assessment-based and outlined on the member's spending plan.

Limitations/Caps:

- The amount of service is limited by the member's individualized participant-directed budget and spending plan.
- The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.
- PCS: Personal Options services are available to members living in the following types of residential settings: the member's family residence, Specialized Family Care Homes and unlicensed Intensively Supportive Settings (ISS).
- PCS: Personal Options services are limited to the equivalent monetary value of 11,680 units/2920 hours (based upon average of 8 hours per day) of PCS: Traditional Family per member's annual Individual Program Plan (IPP) year for natural family/Specialized Family Care home settings for members eligible to receive public education services. This is in combination with all direct care services available.
- PCS: Personal Options services are limited to the equivalent monetary value of 17,520 units/4380 hours (based upon average of 12 hours per day) of PCS: Traditional Family per member's annual IPP year for natural family/Specialized Family Care home settings for members not eligible to receive public education services. This is in combination with all direct care services.
- PCS: Personal Options services are limited to the equivalent monetary value of 35,712 units/8928 hours annually (based upon an average of 24 hours per day) per member's annual IPP year for members in ISS and licensed settings, to include training. This is in combination with all direct care services available.
- PCS: Personal Options cannot replace the routine care and supervision which is expected to be provided by a parent of a minor member or a Specialized Family Care Provider caring for a minor child.

- PCS: Personal Options may not substitute for federally mandated educational services.

DISCUSSION

Policy limits the amount of units under Person-Centered Support – Personal Options. The Claimant was approved for the maximum amount allowed by policy as a person eligible to receive public education services. Although the Claimant’s representative argued the Claimant was not capable of accepting or benefitting from educational services, he remains eligible for them due to his age. The request for additional units must be denied.

CONCLUSIONS OF LAW

The Claimant’s request for additional units for Person-Centered Support – Personal Options exceeded the amount permitted by policy, found in WV Medicaid Provider Manual Chapter 513, §513.9.2.3.2. The Department acted correctly to deny the additional units.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department’s denial of additional units for Person-Centered Support – Personal Options for the Claimant, in the Title XIX I/DD Waiver program.

ENTERED this 25th day of March 2015

Stephen M. Baisden
State Hearing Officer