



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St., Suite 307
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 25, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1754

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: Taniua Hardy/Pat Nisbet, BMS

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1754

**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 May 23, 2016, on an appeal filed April 22, 2016.

The matter before the Hearing Officer arises from the March 28, 2016 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 ██████████, ██████████. Appearing as a witnesses for the Department were ██████████, Provider/Educator, ██████████, and Taniua Hardy, I/DD Program Manager, Bureau for Medical Services (BMS). The Appellant did not appear for his hearing but was represented by ██████████, Service Coordinator, ██████████, RN, ██████████ and ██████████, Behavior Support Specialist, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated 3/28/16
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.15.1 – Facility-Based Day Habilitation (Traditional Option)
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.20.1 – Skilled Nursing Licensed Practical Nurse (Traditional Option)
- D-4 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.19.1 – Service Coordination (Traditional Option)

- D-5 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.10.1 – Behavior Support Professional I and II (Traditional Option)
- D-6 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.20.2 Skilled Nursing Licensed Registered Nurse (Traditional Option)
- D-7 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.21.1 Transportation Miles (Traditional Option)
- D-8 APS Healthcare 2nd Level Negotiation Request dated 2/18/16
- D-9 APS CareConnection Authorized services/budget year 3/1/16 – 2/28/17

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-8) submitted on February 18, 2016, Respondent notified the Appellant (D-1) that some units of Facility Based Day Habilitation (1:2-4), Skilled Nursing-LPN (1:1), Service Coordination (SC), Behavioral Support Professional I (BSP), Skilled Nursing RN and Transportation-Miles were approved, but not at the level requested because approval of all requested services would exceed or has exceeded the member’s individualized budget.
- 3) Appellant’s budget of \$145,726.72 (D-9) is based on his current annual assessment, and if all of the requested services are approved, Appellant would exceed his budget by \$23,344.56.
- 4) Appellant’s representatives conceded that the units of Facility-Based Day Habilitation (1:3-4) and Transportation Miles authorized are sufficient, but insisted that the other professional services requested are necessary.

Appellant’s representatives noted the following:

- Skilled Nursing RN units used last year were 184 (requested 400 – authorized 64)
- Skilled Nursing LPN units used last year were 693 (requested 1,200 - authorized 560)
- BSP1 units used last year were 614 (requested 700 – authorized 178)
- SC units used last year were 464 (requested 700 – authorized 219)

- 5) Appellant's budget has decreased by just over \$3,000 from the previous year, however, Direct Care services increased by 338 units. As a result, less of the Appellant's budget is available for the purchase of professional services. In addition, there has been no documentation submitted to show that there has been a change in Appellant's assessed needs. Respondent noted that LPN and RN Skilled Nursing units could be reduced by using Approved Medication Assistive Personnel (AMAP) to administer Appellant's medications and by reducing LPN and RN involvement at meetings that do not address Appellant's medical issues.

APPLICABLE POLICY

West Virginia Medicaid Regulations - Chapter 513 – §513.10.1 – Behavior Support Professional I and II (Traditional Option); §513.15.1 Facility-Based Day Habilitation (Traditional Option); §513.19.1 – Service Coordination (Traditional Option); §513.20.2 Skilled Nursing Licensed Registered Nurse (Traditional Option) §513.20.1 – Skilled Nursing Licensed Practical Nurse (Traditional Option); and §513.21.1 Transportation Miles (Traditional Option) - Provide that all units of service must be prior authorized. 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. While Appellant's representatives noted that the Appellant used more professional services - BSP, SC, LPN and RN skilled nursing - the previous year than has been approved, it was also noted that Appellant's Direct Care Services have also increased. Policy, however, requires that all services must be within the member's individualized budget, unless there has been a change in the member's assessed needs. As a result, Respondent was correct in its decision to deny 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 I/DD Waiver 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 services in excess of the Appellant's individualized budget.

ENTERED this ____ Day of May 2016.

**Thomas E. Arnett
State Hearing Officer**