

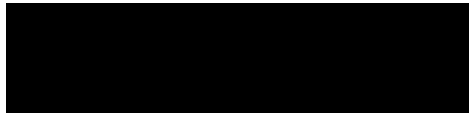


STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 16, 2016



RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1926

Dear [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,

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
KEPRO

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1926

**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 June 28, 2016, on an appeal filed May 19, 2016.

The matter before the Hearing Officer arises from the May 6, 2016 decision by the Respondent to deny or reduce the Appellant's services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Patricia Nisbet and Taniua Hardy. Appearing as witnesses for the Respondent were ██████████ and ██████████. The Appellant was represented by his father, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of decision, dated May 6, 2016
- D-2 Bureau for Medical Services (BMS) Provider Manual, Chapter 513, §513.17.1.2
- D-3 BMS Provider Manual, Chapter 513, §513.18.1.2
- D-4 Service authorization second-level negotiation request form, dated March 17, 2016
- D-5 Screen prints from the Respondent's data system detailing the Appellant's service items and budget for the year beginning August 1, 2015
- D-6 Inventory for Client and Agency Planning, dated May 8, 2015 (evaluation date)
- D-7 Individualized Waiver Budget and Eligibility Assessment signature page and Respondent Rights and Responsibilities form, dated May 8, 2015

Appellant’s Exhibits:

- A-1 Emergency Motion to Continue Hearing and for Direction on Submission of Evidence in Non-Document Form, dated June 17, 2016
- A-2 Correspondence dated April 7, 2015
- A-3 Correspondence dated June 8, 2015
- A-4 Correspondence dated October 28, 2015
- A-5 West Virginia Intellectual/Developmental Disabilities Waiver Program Policy Manual Handbook, dated April 2016
- A-6 West Virginia Intellectual/Developmental Disabilities Waiver Program Member & Family Handbook
- A-7 Notice of decision, dated May 6, 2016; Copy of hearing request
- A-8 Budget Detail screen prints for the Appellant
- A-9 Interdisciplinary Team Signature Sheet, dated January 11, 2016
- A-10 Screen prints of excerpts from an email chain

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) On March 17, 2016, the Appellant submitted a second-level negotiation request for the following I/DD Waiver Program services: 11,680 units of Person-Centered Supports – Personal Options (herein “PCS”); and, 6,912 units of Respite – Personal Options (herein “Respite”). (Exhibit D-4)
- 3) The Respondent notified the Appellant of its decision to deny the full amount of requested service units, offering the reason for denial as “Your request to exceed the service cap limitations in the current WV I/DD Waiver Manual is denied.” (Exhibit D-1)
- 4) The Respondent’s notification to the Appellant indicated 9,512 PCS units and 5,395 Respite units were approvable. (Exhibit D-1)

APPLICABLE POLICY

At §513.17.1.2, the BMS Provider Manual for the I/DD Waiver Program sets limitations and caps on the PCS services available to program participants through the Personal Options Model. In pertinent part, this policy reads, “The maximum annual units of Family PCS: Personal Options

services are limited to the equivalent monetary value of 7,320 units/1,830 hours (based upon average of five hours per day) of Traditional Family PCS per IPP year for persons under age 18 when transferring funds from the annual budget allocation to the Participant-Directed budget.”

At §513.18.1.2, the BMS Provider Manual for the I/DD Waiver Program also sets limitations and caps for Respite services through the Personal Options Model. In pertinent part, this policy reads, “The maximum annual units of In-Home Respite: Personal Options services are limited to the equivalent monetary value of 3,650 units/912 hours (based upon average of 2.5 hour per day) per IPP year.”

DISCUSSION

The Appellant requested PCS and Respite services through the I/DD Waiver Program. This request was denied by the Respondent, in conjunction with a determination of levels of service units “approvable” in both categories. These approvable units were derived from service limitations or caps set by policy in both service categories. The Board of Review is unable to change policy or make policy exceptions, and the Appellant offered no dispute of the method used by the Respondent to derive approvable units from the service limitations or caps. The Respondent was correct to limit approvable units based on the policy applicable to the Appellant’s case.

CONCLUSION OF LAW

Because the Appellant’s request for services through the I/DD Waiver Program would cause him to exceed service limits or caps set by policy, the Respondent must deny the Appellant’s request.

DECISION

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

ENTERED this ____ Day of August 2016.

**Todd Thornton
State Hearing Officer**