

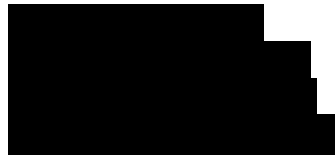


STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St., Suite 307
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

July 20, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-2093

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: Pat Nisbet/Taniua Hardy, BMS

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

████████████████████,

Appellant,

v.

Action Number: 16-BOR-2093

**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 July 18, 2016, on an appeal filed June 13, 2016.

The matter before the Hearing Officer arises from the June 6, 2016 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 ██████████, ██████████. Appearing as witnesses for the Department were ██████████, RN, ██████████, and Tania Hardy, Bureau for Medical Services (BMS). The Appellant was represented by her mother, ██████████. Appearing as a witness for the Appellant was ██████████, Service Coordinator, ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-2 Notice of Denial dated 8/14/15
- D-3 Bureau for Medical Services Provider Manual - Intellectual and Developmental Disabilities Waiver (IDDW), Chapter 513 – §513.20.1 – Skilled Nursing Licensed Practical Nurse (Traditional Option)
- D-4 Bureau for Medical Services Provider Manual - Intellectual and Developmental Disabilities Waiver (IDDW), Chapter 513 §513.8.1 – The Interdisciplinary Team (IDT)
- D-6 APS Healthcare 2nd Level Negotiation Request dated 6/1/16

- D-7 West Virginia I/DD Waiver Individualized Program Plan (IPP) dated 3/14/16
D-8 APS CareConnection Authorized services/budget year 4/1/16-3/31/17

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-6) submitted on or about June 1, 2016, Respondent notified the Appellant on June 6, 2016 (D-2) 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) The Appellant's current individualized annual budget allocation (D-8) is \$86,954.53, and after all requested services were approved, including 7,562 units (7.27 hours per day – Monday through Friday) of LPN 1:1 service, the Appellant had \$4.37 of her budget remaining.
- 4) The Appellant's request for 9,360 units (9 hours per day – Monday through Friday) of LPN 1:1 service (1,798 more than authorized) would have exceeded her individualized budget by \$19,813.96.

APPLICABLE POLICY

The Bureau for Medical Services (Medicaid) Intellectual and Developmental Disabilities Waiver (IDDW) policy manual - Chapter 513 – §513.20.1 Skilled Nursing Licensed Practical Nurse: Traditional Option – Provides that the amount of service is limited by the person's individualized budget. If the individual has a documented change in need after the annual functional assessment has been conducted, then a Critical Juncture IPP meeting must occur to discuss the need for additional services which may or may not be authorized.

Pursuant to West Virginia Medicaid IDDW regulations found at §513.8.1 (The Interdisciplinary Team), any services that cannot be purchased within budget must be supported from unpaid or natural supports or services from another program other than the IDDW.

DISCUSSION

The issue under appeal is whether or not Respondent was correct to deny Appellant's 2nd Level Negotiation request for 9,360 units (9 hours per day, Monday-Friday) of LPN 1:1 service.

Appellant's mother/representative indicated that additional LPN 1:1 services are required due to the hours she and her husband must work – at least 8 hours per day are necessary to help cover the period from which she gets home from dayshift and her husband must leave for afternoon shift.

The regulations that govern the Medicaid I/DD Waiver Program stipulate that LPN services cannot exceed the individualized budget of the benefit recipient. Services that cannot be purchased within budget must be supported from unpaid or natural supports, or services from another program other than the I/DD Waiver Program.

Respondent noted that if all of the requested units of LPN 1:1 service were approved, Appellant would exceed her annual budget by \$19,813.96. Information received at the hearing reveals that when considering the number of days throughout the year in which the LPN would not work - which includes holidays and two weeks of vacation - the number of approved units (7,562) would cover 7.8 hours per day. In addition, Respondent's expert witness noted that the nursing schedule includes several hours of "assessment and monitoring." Appellant contended, however, that she would still require an additional 758 units, exceeding the established budget by \$8,353, to accommodate employment, and the nurse cannot leave her residence and return every 15 minutes to an hour to provide care. However, pursuant to policy, the additional services required by the Appellant must either be supported from unpaid or natural supports; or if the Appellant has a documented change in need after the annual functional assessment has been conducted, then a Critical Juncture IPP meeting must occur to discuss the need for additional services which may or may not be authorized.

As a result, Respondent has acted within regulatory guidelines in its decision to deny the Appellant's 2nd Level Negotiation Request for LPN 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 LPN (1:1) 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 second-level request for I/DD Medicaid payment of LPN services in excess of the Appellant's individualized budget.

ENTERED this ____ Day of July 2016.

**Thomas E. Arnett
State Hearing Officer**