

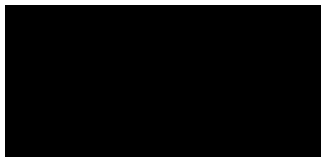


STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
416 Adams St., Suite 307  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

August 29, 2016



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 16-BOR-2342

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,

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-2342**

**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 August 25, 2016, on an appeal filed July 22, 2016.

The matter before the Hearing Officer arises from the July 15, 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 Brittany Doss, Hearing Coordinator, KEPRO. Appearing as a witness for the Department was Taniua Hardy, Program Manager, Bureau for Medical Services (BMS). The Appellant was represented by ██████████. Appearing as witnesses for the Appellant were ██████████ Service Coordinator, ██████████ ██████████ Behavioral Support Professional, ██████████ ██████████ Appellant's sister/respite provider. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated 7/15/16
- D-3 I/DD Waiver Manual §513.18.2.1 – Out-of-Home Respite (Traditional Option)
- D-4 I/DD Waiver Manual §513.19.1 – Service Coordination (Traditional Option)
- D-8 I/DD Waiver Manual §513.8.1 – The Interdisciplinary Team (IDT)
- D-9 Service Authorization 2<sup>nd</sup> Level Negotiation Request dated 6/29/16
- D-11 Authorized services/budget year 6/1/16 – 5/31/17

\*Exhibits D-2, D-5, D-6, D-7 and D-10 were not submitted into evidence.

**Appellant's Exhibits:**

A-1 Supporting medical documentation

- Cover letter dated 8/12/16 from [REDACTED], Service Coordinator
- Correspondence from [REDACTED] dated 8/9/16
- Correspondence from [REDACTED], dated 7/21/16
- Correspondence from [REDACTED], dated 7/14/16

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 Second-Level Negotiation Request (D-9) dated June 29, 2016, Respondent notified the Appellant (D-1) that additional units of Out-of-Home Respite (3,640) and Service Coordination (480) were denied because approval would exceed or has exceeded the member's individualized budget. The notice indicates, however, that the following units were authorized: Out-of-Home Respite - 2,477 and Service Coordination - 360.
- 3) Exhibit D-11 reveals that the Appellant's current individualized annual budget allocation was set at \$72,269.51 following her annual needs assessment. Respondent noted that pursuant to I/DD Waiver Program policy, approvable service units – Out-of-Home Respite and Service Coordination – are limited by the individualized budget. Because the Appellant's I/DD Waiver individualized annual budget would have been exceeded by \$6,985.75 if all the requested units were approved, the request was denied.
- 4) Appellant's representatives contended that additional Service Coordination units are needed due to the level of collaboration by the service coordinator regarding the medical needs of the Appellant, and additional Out-of-Home Respite is required because the Appellant has irregular sleeping patterns, and the respite allows her mother to catch up on sleep.

**APPLICABLE POLICY**

Policy found in the I/DD Waiver Manual §513.18.2.1 – Out-of-Home Respite (Traditional Option) - stipulates that Out-of-Home Respite services are provided out of the home where the individual resides. These services are provided by awake and alert Direct Support Professionals and are specifically designed to provide temporary substitute care normally provided by a family

member or a Specialized Family Care Provider. Not all forms of respite are paid services. Anytime the primary caregiver can get a break from providing care, then this a form of respite. The services are to be used for relief of the primary caregiver(s) to help prevent the breakdown of the primary caregiver(s) due to the physical burden and emotional stress of providing continuous support and care to the dependent person who receives services. Out-of-Home Respite services consist of temporary care services for an individual who cannot provide for all of their own needs. All units of service must be prior authorized before being provided. Prior authorizations are based on assessed need as identified on the annual functional assessment, and services must be within the individualized budget of the person who receives services.

Pursuant to the I/DD Waiver Manual §513.19.1 – Service Coordination (Traditional Option) - Service Coordination services establish, along with the person, a life-long, person-centered, goal-oriented process for coordinating the supports (both natural and paid), range of services, instruction and assistance needed by persons with developmental disabilities. It is designed to ensure accessibility, accountability and continuity of support and services. This service also ensures that the maximum potential and productivity of a person is utilized in making meaningful choices with regard to their life and their inclusion in the community. All IDDW services purchased, however, must be within their annual individualized budget.

I/DD Waiver Manual §513.8.1 – The Interdisciplinary Team (IDT) The Interdisciplinary Team participates in the IDT meeting for the purpose of review of assessments or evaluations, discussion of recommendations or individualized needs, identification of resources or methods of support outline of service options and training goals, and preparation of interventions or strategies necessary to implement a person-centered plan within the person’s individualized budget. 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. The direct care support services must be purchased in the following order of importance: all types of Person-Centered Supports, Facility-Based Day Habilitation, Pre-Vocational, Job Development, Supported Employment, Electronic Monitoring, LPN services and Respite services.

## **DISCUSSION**

The issue under appeal is whether or not Respondent was correct to deny Appellant’s 2<sup>nd</sup> Level Negotiation request for Out-of-Home Respite and Service Coordination units that exceed her individualized budget.

The regulations that govern the Medicaid I/DD Waiver Program stipulate that the cost of Out-of-Home Respite, as well as Service Coordination, 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 Out-of-Home Respite and Service Coordination were approved, Appellant would exceed her annual budget by \$6,985.15. Appellant’s representatives acknowledged that Service Coordination could be managed by the number of units approved, but indicated that the additional units were requested to ensure

communication regarding medical appointments and medication changes that often occur weekly. Respondent noted, however, that Appellant has been authorized nursing services (LPN and RN) and that the responsibility of communicating Appellant's medical needs would be the responsibility of the nurse.

With regard to the request for additional Out-of-Home Respite services, Respondent noted that the Appellant attends Day Habilitation 4.8 hours a day, Monday through Friday, and that anytime the primary caregiver gets a break from providing care is considered respite. When combining the Day Habilitation units with the number of Out-of-Home Respite currently approved, the Appellant's mother/caregiver will receive 6.5 hours of respite per day, Monday through Friday. In addition, the Appellant's caregiver/mother is currently billing for six (6) hours a day of Person-Centered Support (PCS) services, and Respondent noted that some of those units could be reduced and used for respite if necessary. Moreover, policy stipulates that if respite [or PCS] services exceed the individualized budget, the service(s) must be supported from unpaid or natural supports.

### **CONCLUSIONS OF LAW**

- 1) Services provided to a recipient through the I/DD Waiver Program cannot exceed the individualized budget – this includes Service Coordination and Out-of-Home Respite services.
- 2) Any 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.
- 3) Evidence submitted at the hearing affirms the Department's decision to deny the Appellant's 2<sup>nd</sup> Level Negotiation Request for prior authorization of Service Coordination and Out-of-Home Respite units that exceed her individualized annual budget.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** Respondent's action to deny the Appellant's 2<sup>nd</sup> Level Negotiation Request for I/DD Medicaid payment of Service Coordination and Out-of-Home Respite services in excess of the Appellant's individualized budget.

**ENTERED this \_\_\_\_ Day of August 2016.**

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**Thomas E. Arnett  
State Hearing Officer**