



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 West Washington Street
Charleston, WV 25313
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Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 19, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2351

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, WV Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2351

**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 15, 2016, on an appeal filed July 26, 2016.

The matter before the Hearing Officer arises from the July 26, 2016, decision by the Respondent to deny additional units of Person-Centered Support - Personal Options in the Title XIX Intellectual/Developmental Disabilities (IDD) Waiver Services Program.

At the hearing, the Respondent appeared by ██████████ of ██████████. Appearing as a witness for the Department were ██████████, also of ██████████ and Taniua Hardy, Bureau for Medical Services (BMS). The Appellant was represented by his father, ██████████. Appearing as a witness for the Appellant was ██████████, West Virginia Advocates. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated July 6, 2016
- D-2 Amended Notice of Denial dated July 26, 2016
- D-3 Bureau for Medical Services Provider Manual - Intellectual and Developmental Disabilities Waiver (IDDW), Chapter 513 – §513.17.1.2 – Family Person-Centered Support (Personal Options Model)
- D-4 Bureau for Medical Services Provider Manual - Intellectual and Developmental Disabilities Waiver (IDDW), Chapter 513 – §513.21.2 – Transportation Miles

- D-5 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 June 9, 2016
- D-7 Requested Services for Service September 1,2015 – August 31, 2016

Appellant's Exhibits:

- A-1 Daily Schedule
- A-2 Letter from [REDACTED], MD dated July 19, 2016

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 member of the Medicaid I/DD Waiver Program.
- 2) The Appellant's Individualized Program Plan (IPP) service year is September 1, 2015 – August 31, 2016.
- 3) A six-month Interdisciplinary Team (IDT) meeting was held February 17, 2016.
- 4) On February 17, 2016, the Appellant requested an additional 48 units of PCS Personal Options in excess of the previously approved cap limitation of 17,520 units.
- 5) A Critical Juncture Meeting was held April 5, 2016.
- 6) At the beginning of the service year on September 1, 2015, the Appellant was approved for 17,520 units (12 hours per day) of Person Centered Supports (PCS) Personal Options. A change in policy (D-3), implemented on December 1, 2015, reduced cap limitations to 11,680 units (8 hours per day).
- 7) In response to a 2nd Level Negotiation Request (D-6), the Department issued a Notice of Denial (D-1) for additional units on July 6, 2016, and an Amended Notice of Denial (D-2) on July 26, 2016. The Amended Notice of Denial was due to a change in policy sections, not requested and approvable units.
- 8) Due to available prorated units, the Appellant was notified (D-1 and D-2) he would be eligible for 14,624 units (2,944 more than the cap limit) December 1, 2015.

APPLICABLE POLICY

West Virginia Bureau for Medical Services Provider Manual Chapter 513, §513.17.1.2 reads as follows in pertinent part regarding Person-Centered Support – Personal Options.

Family Person-Centered Support: *Personal Options Model*

Family/Home-Based Person-Centered Support (PCS): *Personal Options* is provided by awake and alert staff and consists of individually tailored training and/or support activities that enable the person who receives services to live and inclusively participate in their community. The activities and environments are designed to increase the acquisition of skills and appropriate behavior that are necessary for the person to have greater independence and personal choice, and to allow for maximum inclusion into their community.

Family PCS: *Personal Options* services are available to persons living in the following types of residential settings: the family home of the person who receives services and Specialized Family Care Homes.

Limitations/Caps:

- The amount of service is limited by the individualized participant-directed budget and spending plan.
- If a person 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.
- The maximum annual units of Family PCS: Personal Options services are limited to the equivalent monetary value of 11,680 units/2,920 hours (based upon average of eight hours per day) of Traditional Family PCS per IPP year for persons aged 18 and older when transferring funds from the annual budget allocation to the Participant-Directed budget. This is in combination with the following direct support services: all other types of PCS, LPN, Crisis Intervention, and Electronic Monitoring
- All direct support services cannot exceed the equivalent monetary value of an average of 12 hours per day on days when Facility-Based Day Habilitation, Job Development, Pre-vocational, and/or Supported Employment services are provided.
- Family PCS: Personal Options cannot replace the routine care, and supervision which is expected to be provided to biological, adoptive or foster children or adults by a parent or a Specialized Family Care Provider.

West Virginia Bureau for Medical Services Provider Manual Chapter 513 Glossary provides the following definition:

Critical Juncture: Any time that there is a significant event or change in the person's life that requires a meeting of the IDT. The occurrence may require that a service needs to be decreased, increased or changed. A Critical Juncture constitutes a change in the person's needs such as behavioral, mental health or physical health, service/service units, supports, setting, or a crisis.

West Virginia Bureau for Medical Services Provider Manual Chapter 513, §513.2.3.1 reads as follows in pertinent part regarding Centers for Medicare and Medicaid Services (CMS) Quality Assurances.

The CMS mandates the I/DD Waiver Program guarantee the following Quality Assurance:

- **Service Plan:** A person has a service plan that is appropriate to their needs and preference and receives the services/supports specified in the service plan.

DISCUSSION

The Respondent denied the Appellant's request to increase the maximum annual units of Person Centered Support (PCS) Personal Options from 17,520 to 17,568. Additionally, the Respondent notified the Appellant the approvable units of PCS Personal Options would decrease to 14,624. The Appellant contests this decision as there were no changes in his circumstances.

The Appellant's service year began September 1, 2015. During that time period, the policy in effect stated "PCS Personal Options services are limited to the equivalent monetary value of 17,520 units". The Appellant received the maximum amount of units.

Effective December 1, 2015, the regulations that govern the I/DD Waiver Program stipulate that PCS Personal Options annual units cannot exceed the cap limit of 11,680 units (8 hours per day). A Critical Juncture meeting must occur if a person has had a documented change in need since the annual functional assessment.

During the six-month IDT meeting on February 17, 2016, the Appellant and his Representative, [REDACTED], did not wish to review assessments and evaluations because there were no changes since his last IDT meeting. Mr. [REDACTED] informed the Service Coordinator the requested amount of PSC units submitted to [REDACTED] at the annual IDT meeting was incorrect. The Appellant's Service Coordinator agreed to request a modification due to her miscalculation.

A Critical Juncture meeting was held on April 5, 2016, to advise the Appellant that the approvable units of PCS Personal Options would decrease effective May 1, 2016. The reduction was a result of a change to the I/DD Waiver Policy which lowered the cap limitation of approvable PCS Personal Options units from 17,520 units to 11,680 units. The I/DD Waiver Policy stipulates the purpose of a Critical Juncture meeting is to address any significant changes in the person's assessed needs. It does not support the conducting of a Critical Juncture meeting to implement a policy change.

Respondent's witness, Taniua Hardy, testified the change in policy occurred December 1, 2015. Evidence shows the Appellant continued to receive 17,520 units of PCS Personal Options after this date. Respondent's witness, [REDACTED], stated there was an error in authorization and the approvable units of PCS Personal Options was an oversight on [REDACTED] part. Mr. [REDACTED] also noted the Appellant had an available proration of PCS Personal Options units which allowed the approvable units to increase from the new cap limit of 11,680 to 14,624 for the remainder of the service year.

Mr. [REDACTED] testified the new limit of 11,680 units would not sufficiently meet the needs of the Appellant. He provided a tentative daily schedule for the Appellant giving a timeline of his activities which require assistance and monitoring. Additionally, Mr. [REDACTED] submitted a letter from the Appellant's physician to corroborate with his own testimony that the Appellant requires a minimum of 12 hours supervision. Mr. [REDACTED] also expressed concerns of discrimination because the other available direct support services that could potentially provide the additional four hours needed are not tailored to meet the Appellant's needs.

The Appellant's service year began September 1, 2015 and ends August 31, 2016. When approved, the old policy which allowed 17,520 units of PCS Personal Options was in effect. The Critical Junction meeting was not necessary as the Appellant had no change in need or circumstances. The request for a modification of PCS Personal Options units was a result of an error at the annual meeting, not a change in need. The I/DD Waiver Manual states the I/DD Waiver Program must provide the services and supports specified in the service plan.

CONCLUSIONS OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request to exceed the maximum limit of 17,520 units of PCS Personal Options as set forth by policy at the time of the Appellant's annual assessment. However, the Department's decision to decrease approvable PCS Personal Options in the middle of the service year is not supported by policy.

DECISION

- 1) It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Appellant's request to increase PCS Personal Options units from 17,520 to 17,568, as this is above the maximum limit set in place at the beginning of the Appellant's service year.
- 2) It is the decision of the State Hearing Officer to **reverse** the Department's action to decrease the Appellant's PCS Personal Options units from 17,520 to 11,680, as the Appellant had no change in need or circumstances.

ENTERED this 19th day of August 2016

**Natasha Jemerison
State Hearing Officer**