



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 29, 2016



RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2401

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 Official 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, BMS

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2401

**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 18, 2016, on an appeal filed August 1, 2016.

The matter before the Hearing Officer arises from the July 5, 2016 decision by the Respondent to deny Appellant's request for Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program services that exceed the individualized participant budget.

At the hearing, the Respondent appeared by ██████████, ██████████. Appearing as a witness for the Department was Taniua Hardy, Bureau for Medical Services (BMS). The Appellant was present but did not testify. The Appellant was represented by ██████████, Service Coordinator with ██████████. Appearing as witnesses for the Appellant were ██████████, ██████████, Behavior Support Professional with ██████████, ██████████, Executive Director with ██████████, ██████████, Clinical Supervisor with ██████████, ██████████ staff member, and ██████████, Healthcare Surrogate. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial, dated July 5, 2016
- D-2 I/DD Waiver Policy Manual, §513.17.4.1
- D-3 I/DD Waiver Policy Manual, §513.8.1
- D-4 Service Authorization - 2nd Level Negotiation Request, dated June 11, 2016
- D-5 Individualized Program Plan (IPP), dated May 18, 2016
- D-6 Request for Prior Authorization for Direct Support Services Change in Living Arrangement, dated February 26, 2016

- D-7 [REDACTED] Purchase Request Details, IDT start date November 10, 2015
- D-8 Inventory for Client and Agency Planning (ICAP), dated October 15, 2015
- D-9 Annual Functional Assessment Signature Page, dated October 15, 2015

Appellant's Exhibits:

- A-1 Utilization Report, dated December 1, 2015 - November 30, 2016
- A-2 [REDACTED] Purchase Request Details, IDT start date November 10, 2015
- A-3 I/DD Waiver Purchase Request Worksheet, anchor date December 1, 2015
- A-4 Incident Reports, dated January 2016 through May 2016
- A-5 Behavior Related Crisis Plan, dated March 2014
- A-6 Positive Behavior Support Plan, dated February 16, 2016
- A-7 Psychological Evaluation, dated December 8, 2009
- A-8 Designated Medical Surrogate form, dated May 12, 2011
- A-9 Request for Nursing Services, dated February 1, 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 Official sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant is a recipient of benefits and services through Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program (I/DD Program).
- 2) On October 15, 2015, an Inventory for Client and Agency Planning (ICAP) was completed by Service and Support Facilitator, [REDACTED], and Case Manager, [REDACTED], indicating the Appellant displays moderately serious behavior problems, including being verbally abusive up to 10 times per day and destructive up to six times per week. (D-8)
- 3) On February 26, 2016, a Request for Prior Authorization for Direct Support Services Change in Living Arrangement form was submitted, requesting services to continue in the amount of 17,568 units of 1:1 and 17,568 units of 1:2. The request was "Conditionally Recommended", providing the Appellant's budget of \$154,492.85 was not exceeded and the Appellant was not utilizing a 1:1 setting 24 hours per day. (D-6)
- 4) From December 2009 through May 2016, the Appellant displayed destructive behaviors and was verbally abusive to her roommate and staff. (A-4 through A-7)
- 5) On May 18, 2016, the Appellant's IDT completed a six-month Individualized Program Plan (IPP). The IDT agreed the Appellant's roommate should be removed from the home, due to verbal abuse from the Appellant. A Purchase Request Worksheet was completed and signed by the team on May 18, 2016, requesting to permanently place the

Appellant in a 1:1 setting. The requested increase in 1:1 units would exceed the Appellant's annual budget by \$26,918.43. (D-5)

- 6) The Respondent issued a Notice of Denial on July 5, 2016, advising the Appellant that the Service Authorization- 2nd Level Negotiation Request of 27,377 Unlicensed Residential 1:1 units were denied because the Appellant's annual budget would have been exceeded, and she did not show that funds in excess of the budget were necessary to ensure her health and safety in the community. (D-1)
- 7) The Appellant's current annual budget is \$154,492.85. In order not to exceed the Appellant's assigned annual budget, only 16,568 of the 27,377 requested units of Unlicensed Residential 1:1 can be approved. The Appellant also requested 6,759 units of Unlicensed Residential 1:2. The Respondent is able to approve 17,568 of 1:2, without exceeding the annual budget. (D-1)

APPLICABLE POLICY

West Virginia Bureau for Medical Services Provider Manual, §513.17.4.1 states that all units of Unlicensed Residential services 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. The amount of service is limited by the individualized budget of the person who receives services. 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. Also, all requests for more than an average of 12 hours per day of 1:1 services require BMS approval. Approval of this level of service will be based on demonstration of assessed need, not on a particular residential setting.

West Virginia Bureau for Medical Services Provider Manual, §513.8.1 states the IDT must consider all supports available, both paid and unpaid. Any services that cannot be purchased within the budget must be supported from unpaid or natural supports or services from another program other than the I/DD Waiver.

West Virginia Bureau for Medical Services Provider Manual, §513.25.4.2 states the IDT must initially make every effort to purchase services for the person receiving services within the budget allocated by the Utilization Management Contractor (UMC). As part of this effort, the IDT should consider substituting less expensive services for more expensive services. A "first level negotiation" request may be submitted in the UMC web portal if the person or legal representative:

- Determines, after making every effort to purchase services within the allocated budget, that the budget is not sufficient to purchase services necessary to ensure the person's health and safety within the community; or
- Believes there has been a change in circumstances since the assessment that is documented pursuant to a Critical Juncture Meeting.

DISCUSSION

The Appellant's annual budget was determined to be \$154,492.85 for the budget year December 1, 2015 through November 30, 2016. The Respondent denied the Appellant's request to increase Unlicensed Residential 1:1 units to 27,377 from the previously approved 16,568. The evidence presented showed the additional requested units exceeded the Appellant's annual budget by \$26,918.43.

The Appellant's representative, [REDACTED] (Ms. [REDACTED]) expressed concern that the Appellant's current 1:2 setting was not suitable to her needs. Ms. [REDACTED] testified that the Appellant needs constant attention from [REDACTED] staff. She added there have been several incidents involving the Appellant, her roommate, and staff, which have all been documented.

[REDACTED] (Ms. [REDACTED]) testified that the Appellant is verbally abusive to her roommate and staff on a daily basis and the behavior continues to worsen. Ms. [REDACTED] stated they have done everything they can to stay below the Appellant's budget, but she feels it is cruel and unfair to the Appellant's roommate to remain in that setting.

[REDACTED] is the Appellant's healthcare surrogate and also the roommate's guardian. She stated she witnessed the Appellant's abuse of the staff and her roommate. At the IDT meeting held on May 18, 2016, the Appellant's IDT determined the Appellant's roommate would be removed from the home, changing the Appellant's setting to 1:1.

The Department's witness, Tania Hardy (Ms. Hardy), suggested the Appellant's IDT did not adhere to policy. Ms. Hardy stated if the Appellant had a change in need and circumstances, a Critical Juncture meeting should have been held. Ms. Hardy testified the Appellant's services were changed from 1:2 to 1:1 without approval from BMS, which is a requirement. Ms. Hardy also stated BMS has crisis services that could have been utilized had the Appellant's Representative made the request.

Evidence presented by both the Appellant and the Department showed the Appellant displayed behavior problems since at least the beginning of the service year when the budget was established. The Appellant's ICAP, signed October 15, 2015, shows the Appellant was verbally abusive up to 10 times per day and destructive up to six times per week. There was no evidence presented to show that the Appellant demonstrated changes resulting in an increased need of services since her annual assessment, upon which her current budget is based. The additional requested units would place the Appellant over her current annual budget. The Department's decision to deny the Appellant's request for increased Unlicensed Residential 1:1 units was within policy guidelines.

CONCLUSIONS OF LAW

- 1) The Appellant failed to demonstrate a change in her assessed needs.
- 2) The request for additional service units would exceed the Appellant's annual budget for the budget year December 1, 2015 through November 30, 2016.
- 3) The Respondent must deny the Appellant's request in accordance with policy.

DECISION

It is the decision of the State Hearing Official to **uphold** the Department's action to deny the Appellant's request for additional Unlicensed Residential 1:1 units in excess of the Appellant's individualized budget.

ENTERED this 29th day of August 2016.

Natasha Jemerison, State Hearing Officer