



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

January 20, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3216

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 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,

Lori Woodward
State Hearing Official
Member, State Board of Review

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

cc: Kimberly Stitzinger, Esq.

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3216

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICIAL

INTRODUCTION

This is the decision of the State Hearing Official 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 January 13, 2016, on an appeal filed October 7, 2015.

The matter before the Hearing Official arises from a subsequent denial by the Respondent from an August 11, 2015 decision for remand. On September 24, 2015 the Appellant's May 14, 2015 requested service units through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program in excess of her current budget was denied after remanded re-evaluation.

At the hearing, the Respondent was represented by counsel, Kimberly Stitzinger, Assistant Attorney General. Appearing as witness for the Department was Tania Hardy, Bureau for Medical Services (BMS) Program Manager. The Appellant was represented by counsel, ██████████. Appearing as witness for the Appellant was her mother and guardian, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- R-1 Notice of Denial, dated September 24, 2015
- R-2 Notice of Denial, dated May 26, 2015
- R-3 I/DD Waiver Policy Manual, §513.9.1.10.1 (effective January 1, 2013)
- R-4 2nd Level Negotiation Request, dated May 14, 2015
- R-5 Services Authorized for Service Year May 1, 2015 – April 30, 2016
- R-6 Services Authorized for Service Year May 1, 2014 – April 30, 2015
- R-7 Inventory for Client and Agency Planning (ICAP), dated February 9, 2015
- R-8 Inventory for Client and Agency Planning (ICAP), dated March 10, 2014

Appellant's Exhibits:

- A-1 New Structured Interview, Assessment Date February 9, 2015
- A-2 Hearing/Grievance Request Notification (IG-BR-29), Request for Hearing, Evidence Packet Cover Letter Dated October 27, 2015 from BMS

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 participant in the WV Medicaid I/DD Waiver Program (Waiver Program) benefits and services.
- 2) As a requirement for Waiver Program participation, each participant must undergo a new functional assessment each year to determine the participant's assigned budget for the upcoming budget year.
- 3) Per Respite Agency, Traditional Option policy, all units of service must be prior authorized before being provided. These prior authorizations are based on assessed need and services and must be within the established budget. Once the yearly budget has been established, it may be increased or decreased only if changes have occurred regarding the participant's assessed need. (Exhibit R-3)
- 4) The Appellant underwent her Annual Functional Assessment on February 9, 2015. (Exhibit R-7)
- 5) The Appellant's budget was established at \$62,162.76 for the current assigned budget year, May 1, 2015 – April 30, 2016. (Exhibit R-5)
- 6) On July 30, 2015, in Board of Review Action #15-BOR-2253, a hearing on the issue of the Department's May 26, 2015 second-level request (hereinafter referred to as request) denial for Respite-Agency 1:1 service units in excess of the Appellant's current budget year was convened.
- 7) On August 11, 2015, an Order was entered to remand back to the Department for re-evaluation of the Appellant's request denial as it was unclear from the evidence provided at the hearing whether due consideration was given to the Appellant's 2015 and 2014 Inventory for Client and Agency Planning (ICAP) in denying the request on appeal.
- 8) The Department re-evaluated the Appellant's request as ordered. The Department reviewed the request and attached narrative by the Appellant's previous service

coordinator, [REDACTED] (Ms. [REDACTED] which asserted that the Appellant's current assessment showed:

- a decline in the area of Overall Adaptive Behavior age;
 - an increase in socially offensive and withdrawn behaviors; and
 - a decrease in the severity of asocial behavior. (Exhibit R-4)
- 9) The testimony showed that although the Department considered the New Structured Interview dated February 9, 2015 (Exhibit A-1) along with the Appellant's ABAS assessment and ICAP in its decision, it gave more weight to the areas which were identified on the request submitted by Ms. [REDACTED]
- 10) The testimony showed that in comparing the 2014 and 2015 ICAP assessments, the Department found that the Appellant was noted to have improved scores in the areas which were identified in the submitted request (Exhibit R-4):
- the Maladaptive Behavior Index Score in the area of Asocial, the Appellant improved from very serious in 2014 to serious in 2015;
 - the Socially Offensive category, the Appellant showed exhibiting this behavior from one or more times an hour in 2014 to one to ten times a day in 2015; and
 - the Withdrawn category, showed one to ten times a day in 2014 to one to six times a week in 2015 which were within the Adaptive Behavior assessment section.
- 11) The Appellant's Overall Adaptive Behavior age equivalent in 2014 was 0 years and 8 months; whereas, in 2015 it showed a slight decrease to 0 years and 7 months. (Exhibits R-7 and R-8) This slight decrease was not determined by the Department to support approval of the requested Respite-Agency 1:1 over the Appellant's current budget.
- 12) After re-evaluating the request as ordered on remand, the Department determined that it correctly denied the requested Respite-Agency 1:1 service units that were in excess of the Appellant's budget. A denial notice was issued on September 24, 2015 notifying the Appellant of the denial. (Exhibit R-1)
- 13) The Appellant's mother and guardian, [REDACTED] (Ms. [REDACTED] is the primary caregiver for the Appellant and is employed by providing services for the member in addition to being employed outside of the home full-time. (Exhibit A-1)
- 14) Ms. [REDACTED] husband, who is also a household member, works 30 hours per week.

APPLICABLE POLICY

Bureau for Medical Services (BMS) Policy Manual §513 states that the Waiver Program is a program that reimburses for services to instruct, train, support, supervise, and assist individuals who have intellectual and/or developmental disabilities in achieving the highest level of independence and self-sufficiency possible. The Waiver Program provides services based on a person's annual functional assessment and assigned individualized budget in natural settings, homes, and communities where the person resides, works, and shops.

BMS Policy Manual §513.7.1, Annual Re-determination of Medical Eligibility, explains that in accordance with federal law, a re-determination of medical eligibility must be completed at least annually. At a minimum, annual redetermination of eligibility will include one annual functional assessment which includes a structured interview as well as standardized measures of adaptive behavior in the six major life areas completed by the UMC and the results provided to the MECA. Per policy, a Waiver Program participant must undergo an annual functional assessment for re-determination of medical eligibility upon which a new individualized budget calculation for the upcoming budget year is determined.

West Virginia Medicaid Regulations, §513.9.1.10.1, Respite: Agency Traditional Option, states that all units of service must be prior authorized before being provided. Prior authorizations are based on assessed need, and services must be within the member's individualized budget. The budget allocation may be adjusted only if changes have occurred regarding the member's assessed needs. Respite: Agency services are not to replace natural supports (which includes a non-custodial parent) available to the member.

DISCUSSION

On August 11, 2015 the issue of Appellant's second-level negotiation request denial was remanded back to the Department for re-evaluation as it was unclear from the evidence presented at the July 2015 hearing that due consideration was given to the ICAP scores. Upon the Department's re-evaluation, the Appellant's second-level negotiation request was again denied on September 24, 2015.

Policy is clear that each year a Waiver Program participant must undergo a functional assessment which assists in determination of the budget for the upcoming year. A Waiver Program participant must stay within the assessed annual budget. However, increases or decreases in a participant's budget may be determined by the Department if there have been changes in the member's assessed needs.

The testimony and evidence showed that the Department carefully considered the second-level negotiation request submitted on behalf of the Appellant. The specific areas identified in the request were compared with the ICAP scores for 2014 and 2015, in addition to the February 9, 2015 structured interview, and the ABAS assessments. After determining there were increases in those identified areas, the Department affirmed their denial and issued notice to the Appellant on September 24, 2015.

Whereas there was no evidence in the September 1, 2015 request to indicate the Appellant's assessed needs have changed since the budget determination, and authorization of additional Respite units would cause Appellant to exceed her individualized annual budget, Respondent has acted within regulatory guidelines in its decision to deny the Appellant's second-level negotiation request.

CONCLUSION OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of Respite 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 negotiation request for I/DD Medicaid payment of Respite services in excess of the Appellant's individualized budget.

ENTERED this 20th day of January 2016.

Lori Woodward, State Hearing Official