



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

January 28, 2016



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-3380

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,

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: 15-BOR-3380**

**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 January 27, 2016, on an appeal filed November 25, 2015.

The matter before the Hearing Officer arises from the October 23, 2015 decision by the Respondent to deny Appellant's request for Medicaid I/DD Waiver Program services that exceed his individualized budget.

At the hearing, the Respondent appeared by ██████████, APS Healthcare. Appearing as a witness for the Department was Patricia Nisbet, Director, HCBF, Bureau for Medical Services (BMS). The Appellant was represented by his mother, ██████████. Appearing as a witness for the Appellant was ██████████, Service Coordinator, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial dated 10/23/15
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.8.2 – Person-Centered Support: Family: Traditional Option
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.10.1 – Respite: Agency: Traditional Option
- D-4 APS Healthcare 2<sup>nd</sup> Level Negotiation Request dated 9/15/15
- D-5 Authorized services/budget year 9/1/15 – 8/31/16

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-4) submitted on September 15, 2015, Respondent notified the Appellant (D-1) that additional units of PCS-Family 1:1 (11,680) and Respite 1:1 (6,912) were denied because approval would exceed or has exceeded the member's individualized budget. The notice indicates, however, that the following units were approved: PCS-Family 10,345 and Respite 5,000.
- 3) Exhibit D-5 reveals that the Appellant's current individualized annual budget allocation was set at \$59,001.76 following his annual needs assessment. Respondent noted that pursuant to I/DD Waiver Program policy, approvable service units – Respite and PCS-Family – are limited by the individualized budget. Because the Appellant's I/DD Waiver individualized annual budget would have been exceeded by \$13,234.73 if all the requested units were approved, the request was denied.
- 4) Appellant's representative/mother proffered testimony to indicate that the request for additional units of PCS-Family and Respite services is equal to the amount her son has previously received. She reported that Appellant's father is a truck driver and that she is a nurse, and both of them must work erratic schedules. Because her son is special needs, she cannot leave him in the care of anyone.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.8.2 *Person-Center Support: Family: Traditional Option*: Person-Centered Support (PCS): Family consists of individually tailored training and/or support activities that enable the member to live and inclusively participate in the community in which the member resides, works, receives their education, accesses health care, and engages in social and recreational activities. The activities and environments are designed to increase the acquisition of skills and appropriate behavior that are necessary for the member to have greater independence, personal choice and allow for maximum inclusion into their community. The amount of service is limited by the member's individualized budget. The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.10.1 *Respite: Agency: Traditional Option* – includes agency services provided by awake and alert staff are specifically designed to provide temporary substitute care normally provided by a family member or a Specialized

Family Care Provider. The services are to be used for relief of the primary care-giver(s) to help prevent the breakdown of the primary care-giver(s) due to the physical burden and emotional stress of providing continuous support and care to the dependent member. Respite services consist of temporary care services for an individual who cannot provide for all of their own needs. The amount of service is limited by the member's individualized budget. The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.

### **DISCUSSION**

Evidence submitted at the hearing indicates that the Appellant's denied request for services (PCS-Family and Respite) included care for the Appellant at 12.72 hours per day, and the units of services authorized provided for Appellant's care at 10.47 hours per day (2 hours less per day). Respondent noted that if Appellant would benefit from more Respite service units, PCS-Family service units (hours for which Appellant's mother is paid) could be shifted to Respite units, thereby creating greater flexibility for parental employment. Appellant's mother contended that her son has benefitted from her care and indicated she was unwilling to compromise because she wanted the amount of service units (PCS-Family and Respite) for which her son was previously approved.

Medicaid regulations provide that an I/DD Waiver Program member's annual budget allocation is determined by his or her assessed needs and stipulate that PCS-Family and Respite services cannot exceed the individualized budget of the member. While the regulations allow for a budget allocation adjustment when there are changes in the member's assessed needs, there was no evidence submitted to indicate Appellant's assessed needs were inaccurate or changed.

### **CONCLUSION OF LAW**

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of PCS-Family and Respite services that exceed his 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 PCS-Family and Respite services in excess of the Appellant's individualized budget.

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

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**Thomas E. Arnett  
State Hearing Officer**