



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Jim Justice  
Governor

BOARD OF REVIEW  
416 Adams St.  
Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326

Bill J. Crouch  
Cabinet Secretary

November 13, 2017



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR  
ACTION NO.: 17-BOR-2473

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision  
Form IG-BR-29  
cc: Janice Brown

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 17-BOR-2473

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 █, a protected individual. 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 October 19, 2017, on an appeal filed September 12, 2017.

The matter before the Hearing Officer arises from the September 1, 2017 decision by the Department to deny requested Title XIX Medicaid Intellectual and Developmental Disabilities Waiver (I/DD) program service units of Unlicensed Residential (1:1) and Transportation (trips).

At the hearing, the Respondent appeared by █, KEPRO. Appearing as witness for the Department was Taniua Hardy, Bureau for Medical Services (BMS). The Appellant was represented by her guardian, █. Appearing as witnesses for the Appellant were █ the fiancé of █, and █, Service Coordinator with █. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

**Department's Exhibits:**

- D-1 BMS Notice of Denial letter, dated September 1, 2017
- D-2 REM Notice of service discontinuation, dated July 28, 2017
- D-3 I/DD Waiver Individualized Program Plan (IPP) Critical Juncture, dated August 9, 2017
- D-4 I/DD Waiver Policy Manual §513.17.4

D-5 I/DD Waiver Direct Support Services Living Arrangement Assessment, date submitted June 15, 2017

D-6 I/DD Waiver Policy Manual §513.24.3

D-7 I/DD Waiver 2<sup>nd</sup> Level Negotiation Request, dated August 28, 2017

D-8 I/DD Waiver Care Connection Purchase Request Details, IDT Date June 15, 2017

**Appellant's Exhibits:**

A-1 West Virginia University (WVU) Medicine letter, dated May 13, 2016

A-2 WVU Medicine letter, dated September 14, 2017

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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) The Appellant is a recipient of benefits and services through Title XIX Medicaid I/DD Waiver Program.
- 2) The Appellant received residential support services through [REDACTED] at the onset of her IPP service year. [REDACTED] is the Appellant's Service Coordinator (SC) with [REDACTED] (Exhibits D-2 and D-3).
- 3) The Appellant resided in a 1:2 setting with the same roommate from January 2013 until December 2016. (Exhibit D-3)
- 4) The Appellant has a history of physically aggressive behaviors and tantrums. The Appellant's roommate is not listed as a trigger for maladaptive behavior. (Exhibit D-3)
- 5) Other individuals had resided with the Appellant but had been moved or were no longer receiving residential services from [REDACTED]
- 6) For I/DD Waiver service year July 1, 2017 through June 30, 2018, the Appellant was approved for 12.79 hours per day of Unlicensed Residential Person-Centered Support (PCS) 1:1, and Skilled Nursing LPN 1:1 for 1.43 hours per day. Had the SC accessed Care Connection and purchased the approved 9.93 hours of Unlicensed Residential PCS 1:2 services, the Appellant could have interacted with another member of the program in the community. These services combined equal 24.15 hours of care per day. (Exhibit D-1)
- 7) On June 15, 2017, the Appellant's SC completed a Direct Support Services Living Arrangement Assessment requesting services exceeding the Appellant's annual budget by \$36,359.75. (Exhibit D-5)

- 8) The Living Arrangement Assessment requested services to support the Appellant living in a 1:1 setting due to an increase in maladaptive behaviors. Assessment documentation does not support that the Appellant had maladaptive behaviors toward her roommate. (Exhibit D-5)
- 9) The Appellant's perceived loss of attention, staffing issues, and Appellant illness were the primary reasons for increased maladaptive behaviors. Evidence presented did not support a clinical necessity requiring the Appellant to reside in a 1:1 setting due to maladaptive behaviors. (Exhibits D-3 and D-5)
- 10) Policy provides that requests for 1:1 services exceeding twelve (12) hours per day must be based on demonstration of assessed need, not on a particular residential setting. (Exhibit D-4)
- 11) On July 27, 2017, BMS conditionally approved 8,625 units of Unlicensed Residential Person-Centered Support (PCS) 1:1 and Skilled Nursing LPN 1:1 for 92 days from July 1, 2017 through September 30, 2017 to allow the Appellant's team to locate a roommate by September 30, 2017. (Exhibits D-2 and D-5)
- 12) On July 28, 2017, [REDACTED] issued a notice to the Appellant advising her that due to company downsizing, [REDACTED] would not be able to provide residential support to the Appellant long-term. The notice requested a meeting to begin team planning to locate another residential service provider and appropriate roommate for the Appellant. (Exhibit D-2)
- 13) On August 9, 2017, a Critical Juncture was held. The SC agreed to complete a 2<sup>nd</sup> Level Negotiation Request to request services to provide twenty-four (24) hour care for the Appellant. The SC agreed to continue planning to locate another residential service provider. There was no discussion or agreement regarding finding another roommate for the Appellant. (Exhibit D-3)
- 14) The SC did not complete a 2<sup>nd</sup> Level Negotiation Request until August 28, 2017.
- 15) Evidence presented during the hearing did not support a clinical need for Unlicensed Residential PCS 1:1 or Transportation trips.
- 16) The request for twenty-four (24) hours of 1:1 services for the Appellant is a result of [REDACTED] downsizing and refusing to seek a new roommate for the Appellant to ensure that her service needs are met within her current I/DD Waiver service budget, not because of a clinical need by the Appellant.
- 17) The SC failed to act to ensure continuity of care for the Appellant within the Appellant's service needs and budget. (Exhibit D-3)
- 18) Taniua Hardy testified that she is willing to continue assisting the Appellant with ensuring that [REDACTED] follows the process for transferring the Appellant as outlined in the I/DD Waiver policy manual.

## APPLICABLE POLICY

### **Intellectual and Developmental Disabilities (I/DD) Waiver Policy §513.1 provides in part:**

BMS contracts with a Utilization Management Contractor (UMC) to act as an agent of BMS and administer the operation of the I/DD Waiver program... The UMC provides authorization for services that are based on the persons assessed needs and provides authorization information to the claims payer.

### **I/DD Waiver Policy §513.2 Provider Enrollment and Responsibilities provides in part:**

I/DD Waiver Program providers must...

Ensure that a person is not discharged unless a viable discharge/transfer plan is in place that effectively transfers all services the person needs to another provider and is agreed upon by the person and/or their legal representative and the receiving providers; ...

Provide each person with maximum choice of I/DD Waiver services within their individualized budgets.

### **I/DD Waiver Policy §513.2.3.7 Utilization Guidelines provides in part:**

Each agency must put into place a set of Utilization Guidelines (UG) to ensure that each person who receives I/DD Waiver services receives the authorized services and supports at the right time, in the right amount, and for as long as the services are needed... The purpose of the UG is to... ensure that the services requested and utilized for the person who receives services are within the person's annual individualized budget...

The internal policy of each agency must minimally address the following: ...

- Assessing needs of the person receiving services: Service requests are based on identified need for the coming service year, therefore additional units may not be requested for contingency purposes;
- Choosing services based on the person's assessed needs and within the annual individualized budget;
- Monitoring service utilization throughout the service year;
- Monitoring the needs of the person receiving services and updating services as needed;
- Delivering services based on:
  - Assessed need and within the individualized budget;
  - Agreement by the IDT;
  - I/DD Waiver caps and limitations;

Documentation on the person's IPP; and  
The person's individualized waiver budget

**I/DD Waiver Policy §513.17.4.1 provides in part:**

Unlicensed Residential PCS may be used to assist with the acquisition, retention, and/or improvement of the following areas of functionality:

- Self-care;
- Receptive or expressive language;
- Learning;
- Mobility;
- Self-direction; and
- Capacity for Independent Living...

All units must be prior authorized, based on assessed need as identified on the annual functioning assessment, and services must be within the individualized budget of the person who receives them...

All requests for more than an average of twelve (12) hours per day of 1:1 services require BMS approval. Approval will be based on demonstration of assessed need NOT [emphasis added] on a particular residential setting.

**I/DD Waiver Policy §513.21.3 provides in part:**

Transportation services are provided to the I/DD Waiver recipient in the I/DD Waiver provider agency's owned or leased mini-van or mini-bus for trips to and from the person's home... or to the site of a planned activity or service which is addressed on the IPP and based on assessed need...

All units of service must be prior authorized before being provided, based on assessed need as identified on the annual functional assessment, and must be within the person's individualized budget...

A trip must be related to a specific activity or service based on an assessed need identified on the annual functional assessment and documented in the IPP.

**DISCUSSION**

The Appellant is a recipient of Medicaid I/DD Waiver services through [REDACTED] For service year July 1, 2017 through June 30, 2018, the Appellant was approved for 12.79 hours per day of Unlicensed Residential Person-Centered Support (PCS) 1:1 and Skilled Nursing LPN 1:1 for 1.43 hours per day. The Appellant requested that PCS 1:1 services be increased to twenty-four (24) hours per day and that Transportation trips be increased to 350 units. KEPRO is the UM contracted by BMS to make a decision regarding the Appellant's eligibility. KEPRO determined that the

requested services were not clinically necessary and denied the Appellant's request. The Appellant contended that the services are needed at a twenty-four (24) hour 1:1 ratio and requested that the Board of Review reverse the Respondent's denial of service units.

The Respondent had to demonstrate by a preponderance of evidence that it acted in accordance with policy when determining that the additional service units were not clinically necessary to ensure the Appellant's health and safety in the community. The Respondent argued that the service request was based on [REDACTED] decision to downsize and cease providing residential support services to the Appellant, not because the Appellant demonstrated a clinical need for the increased 1:1 services. Documentation provided with the Living Arrangement Assessment mentioned the Appellant's roommate on two (2) occasions, indicating that the Appellant demonstrated behaviors when staff worked with the roommate. The assessment and 2<sup>nd</sup> Level Negotiation claimed that the Appellant's behaviors increased toward her roommate and staff in a 1:2 setting resulting in the Appellant's roommate moving out. Documentation indicated that the increase in the Appellant's maladaptive behaviors were the result of staffing issues, the Appellant's physical health, and the Appellant's perceived loss of attention from staff in a roommate setting. Attention is not a reason supported by policy for Unlicensed Residential PCS 1:1 services. Evidence presented does not indicate a clinical reason for the Appellant not to have a roommate. On May 13, 2016, the Appellant's physician recommended ten (10) to twelve (12) hours per day of 1:1 staff. On September 14, 2016, the Appellant's physician requested that positive behavior support services be increased from sixteen (16) hours per week to ten (10) hours per day. Services approved for the July 1, 2017 through June 30, 2018 I/DD Waiver service year met or exceeded these physician recommendations. Since the onset of the service year beginning July 1, 2017, the Appellant's father utilized natural support for thirty-five (35) hours per week to assist with the Appellant's service budget utilization. On September 1, 2017, the Respondent issued a notice to the Appellant denying the requested units of Unlicensed Residential 1:1 and Transportation Trips because the Respondent determined the service unit levels were not clinically necessary. The IPP reflected that transportation trips were added to the budget for use when a company car was not available or when the Appellant needed to go out and did not have access to a car. Policy provides that a trip must be related to a specific activity or based on an assessed need, not because a company car is unavailable.

The Appellant's Individual Service Plan (ISP) reflected that "[REDACTED] is to provide Service Coordination to ensure continued access to needed services within the Title XIX Waiver Program." The ISP reflected that the SC would "ensure all needs are known and met, provide any linkage and follow-up to any future needs, purchase and manage services through the KEPRO website, and provide service planning, linkage and referral, advocacy, and other services identified as being necessary to ensure the Appellant's needs and wishes are incorporated into service planning." Although [REDACTED] had openings in [REDACTED] for residential support services, the SC did not complete a referral due to the Appellant's guardian's request that the Appellant remain in the area. At the Critical Juncture, the SC agreed to send a packet of information to the Appellant's guardian regarding Public Partnerships LLC (PPL) and the guardian agreed to consider seeking residential services through PPL. No update on this program was given during the hearing. At the time of the Critical Juncture meeting, the SC had made one (1) referral to [REDACTED] to transfer residential support services for the Appellant but no response had been received. No update was given regarding USC referral status during the fair hearing or

whether the SC had submitted any additional referrals to meet the Appellant's needs. The Appellant's witness testified that multiple referrals had been submitted and that the SC was limited to providers that were accepting referrals. The SC testified that because the Appellant's guardian would like to keep the Appellant in the ██████████ County area, it was almost impossible for the SC to accommodate the transfer of residential support services even if services were available at the 1:2 ratio. The primary motivation for requesting twenty-four (24) hours of 1:1 services is due to ██████ downsizing, ██████ refusal to seek a new roommate for the Appellant, and ██████ failure to adequately align a residential service provider to meet the Appellant's needs within the current allotted budget. Further, the SC was aware of the approaching deadline to obtain a roommate for the Appellant and waited 19 days following the Critical Juncture to submit the 2<sup>nd</sup> Level Negotiation. Per policy, the provider has a responsibility to deliver services based on the Appellant's assessed need and within the individualized budget and to ensure that the Appellant has a viable transfer plan in place that effectively transfers all services she needs to another provider that the Appellant and/or her legal representative and the receiving providers agree upon. During the hearing, BMS ensured the Appellant that BMS is willing to continue working with the Appellant's representative to guarantee that ██████ acts in accordance with policy regarding the Appellant's transfer to another service agency.

It is the decision of the Board of Review that based on the evidence presented, there is no clinical necessity for the Appellant to reside in a 1:1 setting, receive twenty-four (24) hour 1:1 services, or utilize transportation trips for non-assessed reasons. The Respondent was correct in the denial of 1:1 and transportation service units exceeding the Appellant's budget.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that Unlicensed Residential PCS 1:1 and Transportation- trips services be based on client's assessed need.
- 2) The Appellant does not have an assessed clinical need for Unlicensed Residential PCS 1:1 or Transportation-trips exceeding the Appellant's I/DD Waiver service budget.
- 3) The provider's request for twenty-four (24) hour 1:1 care for the Appellant is due to ██████ inability to develop an appropriate transfer plan aligned with meeting the Appellant's service needs, not because the Appellant has a clinical need for an increase in services beyond what can be purchased within the Appellant's budget.



**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to deny requested Title XIX Medicaid Intellectual and Developmental Disabilities Waiver (I/DD) program service units of Unlicensed Residential (1:1) and Transportation (trips) as outlined in the September 1, 2017 notice.

ENTERED this 13th day of November 2017.

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**Tara B. Thompson**  
State Hearing Officer