



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

June 15, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-2946

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, BMS, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2946

**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 May 31, 2017, on an appeal filed November 1, 2016.

The matter before the Hearing Officer arises from the October 17, 2016 decision by the Respondent to deny the Appellant's request for services under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by ██████████, Hearing Coordinator, Kepro. Appearing as a witness for the Respondent was Tania Hardy, Program Director, Bureau for Medical Services. The Appellant appeared by telephone, but did not provide testimony during the hearing. Appearing as witnesses for the Appellant were ██████████, Appellant's sister/guardian; ██████████, Appellant's brother/guardian; ██████████, Service Coordinator, ██████████; and ██████████, Behavior Support Professional, ██████████

All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated October 17, 2016
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.15.1
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.18.1.1

- D-4 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.17.1.1
- D-5 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.19.1
- D-6 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.8.1
- D-7 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.25.2
- D-8 Service Authorization 2nd Level Negotiation Request dated October 6, 2016
- D-9 APS CareConnection Purchase Request Details
- D-10 Individual Program Plan dated August 3, 2016
- D-11 Paid I/DD Waiver Services for period of September 1, 2015 to August 31, 2016

Appellant’s Exhibits:

- A-1 Written statement of Appellant’s family
- A-2 Individual Program Plan dated February 8, 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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On October 17, 2016, the Appellant was notified (D-1) that his request for services under the I/DD Waiver Medicaid Program was denied.
- 2) D-1 indicates that the following service units were not approved as requested:
 - In-Home Respite (1:1): requested units -2,496; approvable units- 0
 - Family PCS (1:1): requested units- 8,760; approvable units- 4,748
 - Service Coordination: requested units- 360; approvable units- 240
- 3) The Appellant’s annual I/DD Waiver Program budget for the budget year ending August 31, 2017 is \$54,909.50 (see Exhibit D-9).
- 4) The Respondent contends that the Appellant would have exceeded his annual budget by \$24,659.16 had all the requested services been authorized.
- 5) The Appellant’s sister and brother, [REDACTED] and [REDACTED], became co-guardians of the Appellant in 2015.
- 6) [REDACTED] gave up full-time employment to serve as the Appellant’s full-time care provider following the death of his father (see Exhibit A-1).

- 7) The Appellant's representatives maintain that the Appellant requires 24/7 care, and currently has no respite care units in his budget. They maintained that [REDACTED] cannot secure full-time employment because the Appellant requires 24-hour care. The Appellant attends day habilitation beginning at 6:30-7:30 a.m. to 2:30-4 p.m., and it would be difficult for [REDACTED] to secure full-time employment in that limited time span.
- 8) The Appellant's witnesses submitted his most recent Individual Program Plan (A-2), reflecting updated notations; however, they voiced no disagreement with information contained in the Appellant's functional assessment.
- 9) The Respondent contends that policy considers "respite time" as any time the care provider is not providing care, including when an individual participates in facility-based day habilitation.
- 10) The Respondent indicated that all the Appellant's requested facility-based day habilitation units were approved, and that the I/DD Waiver Program does not fund 24-hour care in a natural family setting, as some natural supports are expected to be provided.

APPLICABLE POLICY

The I/DD Waiver Manual, *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, provides policy concerning the authorization of I/DD Waiver services, including in-home respite, family person-centered support and service coordination (Chapters 513.17.1.1, 513.17.1.2, 513.18.1.1, 513.18.1.2 and 513.19.1) (Exhibits D-3, D-4 and D-5).

These sections state that all units of service must be 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 member's individualized budget. 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.

I/DD Waiver Manual, Chapter 513.8.1 states that the Interdisciplinary Team (IDT) must make every effort to purchase I/DD Waiver services within the individualized assessed budget. The IDT must consider all supports available, both paid and unpaid, both I/DD Waiver and non-I/DD Waiver.

DISCUSSION

Evidence submitted at the hearing reveals that an I/DD Waiver Program recipient's annual budget is determined by his or her assessed needs on the annual functional assessment. The amount of services is limited by the member's individualized budget. The Appellant requested services that would have exceeded his annual budget by \$24,659. Testimony reveals that the

Appellant has numerous needs regarding care and supervision; however, there was no dispute concerning information on the Appellant's functional assessment, and information provided during the hearing fails to demonstrate that services in excess of the budget are necessary due to a documented change in need. Therefore, the Respondent acted correctly in denying services in excess of the Appellant's annual budget.

CONCLUSION OF LAW

Information submitted at the hearing affirms the Respondent's decision to deny the Appellant's request for services under the I/DD Waiver Medicaid Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's action to deny the Appellant's services under the I/DD Waiver Medicaid Program.

ENTERED this 15th Day of June 2017.

**Pamela L. Hinzman
State Hearing Officer**