



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

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

June 21, 2017

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 16-BOR-2972

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 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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, Bureau for Medical Services

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 16-BOR-2972

**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 appeal filed on November 7, 2016 was held in abeyance pending resolution of a U.S. District Court matter of which the Appellant was potentially a class member. However, the Appellant opted to go forward with the appeal before the Board of Review; therefore, a fair hearing was convened on June 8, 2017.

The matter before the Hearing Officer arises from the October 20, 2016 decision by the Respondent to deny Appellant's request for Medicaid Intellectual and Developmental Disabilities Waiver (IDDW) Program services that exceeded the individualized participant budget.

At the hearing, the Respondent appeared by █ with KEPRO. Appearing as witness for the Respondent was Taniua Hardy, Bureau for Medical Services (BMS). █ with KEPRO was present but did not participate in the hearing. The Appellant appeared by her service coordinator, █, and behavior support professional, █, by the request of the Appellant's guardian, █, who also appeared as witness on the Appellant's behalf. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial, dated October 20, 2016
- D-2 BMS Provider Manual, Chapter 513, IDDW, §513.18.1.1
- D-3 BMS Provider Manual, Chapter 513, IDDW, §513.17.1.1
- D-4 BMS Provider Manual, Chapter 513, IDDW, §513.10.1
- D-5 BMS Provider Manual, Chapter 513, IDDW, §513.8.1
- D-6 BMS Provider Manual, Chapter 513, IDDW, §513.25.2

D-7 2nd Level Negotiation Request, dated October 17, 2016

D-8 Requested Services for Service Year October 1, 2016 to September 30, 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) The Appellant is an active participant in the IDWW Program.
- 2) On October 17, 2016, the Appellant's service coordinator, [REDACTED], submitted a second-level request for additional units of In-Home Respite (1:1), Family PCS (1:1), and Behavior Support Professional I. (D-7)
- 3) The Respondent issued a Notice of Denial on October 20, 2016, advising the Appellant that the request for additional units was denied. (D-1)
- 4) The appeal is based on a service year budget from October 1, 2016 to September 30, 2017 of \$49,991.39. (D-8)
- 5) The requested amount of service units would exceed the service year budget by \$12,591.99.
- 6) The approved amount of service units was the maximum amount that could have been approved within the Appellant's individualized budget.
- 7) The Notice of denial stated that the Appellant's requested amount of service units could not be approved because the assessed annual budget would have been exceeded or had been exceeded without a showing that funds in excess of the budget were necessary to ensure the health and safety of the Appellant in the community. (D-1)

APPLICABLE POLICY

BMS Provider Manual, §513.17.2, describes In-Home Respite as services provided by awake and alert Direct Support Professionals specifically designed to provide temporary substitute care normally provided by a family member or Specialized Family Care Provider. Respite for the primary caregiver can also occur anytime the primary caregiver is not providing care to the person.

BMS Provider Manual, §513.17.1.1, indicates that Family Person-Centered Support (PCS) is only provided by family members or Specialized Family Care Providers living in the home with the person who receives services. Family PCS cannot replace the routine care, and supervision which is expected to be provided to biological, adoptive, or foster children or adults by a parent or Specialized Family Care Provider.

BMS Provider Manual, §513.8.1, The Interdisciplinary Team (IDT) must implement a person-centered plan within the person's individualized budget and make every effort to purchase IDDW services within the individualized budget.

BMS Provider Manual, §513.25.2, requires that the participant and/or his/her legal representative have the responsibility to understand that the IDDW is an optional program and that not all needs may be able to be met through the services available within this program and a person's annual individualized budget. Additionally, the participant and/or his/her legal representative must purchase services within his/her annual individualized budget or utilize natural or unpaid supports for services unable to be purchased.

DISCUSSION

The Appellant's annual budget for the service year of October 1, 2016 to September 30, 2017, was determined to be \$49,991.39. On October 17, 2016, the Appellant's service coordinator requested a total of 3,648 units of In-Home Respite (1:1), 8,320 units of Family PCS (1:1), and 228 units of Behavior Support Professional I. Because the requested services would exceed the Appellant's annual budget by \$12,591.99, the Department only approved 2,967 units of In-Home Respite (1:1), 5,075 units of Family PCS (1:1), and 200 units of Behavior Support Professional I, which was within the Appellant's individualized budget. Additionally, the Department determined that the submitted 2nd level request failed to show that the Appellant's health and safety in the community were at risk if her budget was not exceeded.

The Appellant's service coordinator, [REDACTED], indicated that the Appellant has had an increase in behavior issues. She stated the Appellant acted out verbally and had at least one physical incident. The Department's representative, Taniua Hardy, testified that modifications can be made within the Appellant's budget to fit her needs. She reiterated that per policy, respite for the primary caregiver can occur anytime the primary caregiver is not providing care to the Appellant. Ms. [REDACTED] stated that while she feels the Appellant would benefit from the units that were requested, the IDT team would be able to modify the approved units to fit the Appellant's needs.

The evidence and testimony presented did not show that the Appellant's health and safety in the community were at risk if her budget was not exceeded. Additionally, the Appellant has the option to modify the requested and approved services to best suit the Appellant's needs and stay within her individualized budget.

CONCLUSIONS OF LAW

- 1) The requested additional In-Home Respite (1:1), Family PCS (1:1), and Behavior Support Professional I service units would exceed the Appellant's annual budget for the budget year October 1, 2016 to September 30, 2017.

- 2) The Appellant has the option to modify the requested and approved services to best suit the Appellant's needs and stay within her individualized budget.
- 3) The Appellant's health and safety in the community would not be at risk by not approving the additional requested services units.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Appellant's request for additional In-Home Respite (1:1), Family PCS (1:1), and Behavior Support Professional I service units in excess of the Appellant's individualized budget.

ENTERED this 21st day of June 2017.

Natasha Jemerison, State Hearing Officer