



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

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

June 27, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-1697

Dear Mr. and Mrs. [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: Stacy Broce, BMS
Janice Brown, KEPRO

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

█, A PROTECTED PERSON,

Appellant,

v.

Action Number: 19-BOR-1697

**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 Person. 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 June 18, 2019, on an appeal filed May 8, 2019.

The matter before the Hearing Officer arises from the April 2, 2019 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 Brittany Riggleman, Hearing Coordinator, KEPRO. Appearing as witnesses for the Respondent were Nora Dillard, Program Manager for the I/DD Waiver Program, Bureau for Medical Services, and Ashley Quinn, Provider Educator, KEPRO. The Appellant was represented by her parents, █. Appearing as witnesses for the Appellant were █, Service Coordinator, █, and █, Director, █.

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

Department's Exhibits:

- D-1 Notice of Denial dated April 2, 2019
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.17.4.1
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.8.1

- D-4 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.25.2
- D-5 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.25.4.2
- D-6 I/DD Waiver Exceptions Request Form, Request for Services Above the Budget
- D-7 I/DD Waiver budget letter to [REDACTED] from KEPRO dated September 13, 2018

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 April 2, 2017, the Appellant was notified (D-1) that her 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:

Unlicensed Residential (1:1): requested units- 35,040, approvable units- 16,285
Unlicensed Residential (1:2): requested units- 0, approvable units- 18,755

The letter includes the following reason for denial: “The individual has not shown that the waiver services that can be purchased within budget are insufficient to prevent a risk of institutionalization.”

- 3) The Respondent sent the Appellant’s representatives a budget letter on September 13, 2018 (D-7), which states that the Appellant’s I/DD setting is “**Adult: Individual Support Setting 2 People**, which gave you a budget range of \$123,279.00 to \$128,562.00.”
- 4) Exhibit D-6, an I/DD Waiver Exceptions Request Form, Request for Services Above the Budget, states that the Appellant’s representatives believe that an error was made in the budget calculation because the Appellant “lives in a one bedroom apartment. Initial letter states that she lives in a 2 person ISS. She lives in a 1 person ISS.”
- 5) The Respondent contended that the Appellant is currently assessed as being in a two-person, 24-hour individual support setting, and that she has not been authorized to receive unlicensed residential one-on-one services. Therefore, all units requested in Exhibit D-6 could not be approved.

APPLICABLE POLICY

The I/DD Waiver Manual, *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Section 513.17.4.1 (D-2) states that all units of service must be prior 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, except to the extent services in excess of the individualized budget are approved pursuant to the procedures and standards in Section 513.25.4.2. All requests for more than an average of 12 hours per day of 1:1 services require BMS approval. Approval of this level of services will be based on demonstration of assessed need not on a particular residential setting.

The I/DD Waiver Manual, *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Section 513.8.1 (D-3) states: The IDT must make every effort to purchase IDDW services with the individualized assessed budget. The IDT must consider all supports available, both paid and unpaid, both IDDW waiver and non-IDDW. In circumstances when individuals wish to live in 24-hour supported settings (ISS and GH), the individualized budget must be considered before signing leases, renting apartments, living in family-owned homes or homes left in trust to the person. The person and the legal representative may want the person to live in a certain setting or even live alone, but if the individualized assessed budget does not provide enough support for these settings, then the person or the legal representative need to look at alternatives: roommates, more natural support, supplemental funding from family or trusts, etc. Any services that cannot be purchased within the budget must be supported from unpaid or natural supports or services from another program other than the IDDW, except to the extent services in excess of the individualized budget are approved pursuant to the procedures and standards in Section 513.25.4.2.

The I/DD Waiver Manual, *Covered Services, Limitations, and Exclusions for I/DD Waiver Services* Section 513.25.2 (D-4) states:

The person and/or their legal representative (if applicable) have the following responsibilities:

- To understand that this 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.
- To purchase services within their annual individualized budget or utilize natural or unpaid supports for services unable to be purchased...

The I/DD Waiver Manual, *Covered Services, Limitations, and Exclusions for I/DD Waiver Services* Section 513.25.4.2 (D-5) states:

The individual seeking additional services through the "exceptions process" has the burden of showing that services in excess of the individualized budget are necessary to avoid a risk of institutionalization, To make this showing, the person or his legal representative must provide a clear explanation on the "exceptions process" request as to which additional services

are requested and why they are necessary to prevent a risk of institutionalization, and may provide documentation to support his or her position.

If BMS concludes that the person has demonstrated that funds in excess of the individualized budget are necessary to prevent a risk of institutionalization, BMS will authorize funds in excess of the budget to the extent necessary to keep the person safe and healthy and avoid a risk of institutionalization, and the IPP will be finalized.

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. All units of service must be prior 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 individual seeking additional services through the "exceptions process" has the burden of showing that services in excess of the individualized budget are necessary to avoid a risk of institutionalization. To make this showing, the person or his legal representative must provide a clear explanation on the "exceptions process" request as to which additional services are requested and why they are necessary to prevent a risk of institutionalization, and may provide documentation to support his or her position.

The Appellant's father, [REDACTED], testified that the Appellant had resided in a 2:1 setting in an apartment with a roommate, but became extremely aggressive to her roommate and staff. The Appellant's roommate was fearful and left the apartment, and the Appellant continued to reside in the setting meant for two people. Mr. [REDACTED] stated that his daughter's behavior improved while receiving 1:1 services, but she continues to be a danger to herself and others. He contended that the Appellant's behaviors – which include unpredictable attacks - have been well documented. He indicated that the Appellant has attempted to kick out windows in a vehicle, has attempted to turn off a vehicle ignition, and has tried to jump out of a vehicle. He testified that the goal is to prevent the Appellant from being institutionalized, and the Appellant's behaviors are more manageable in a 1:1 setting. The Appellant now resides in a one-bedroom apartment.

The Respondent's witnesses testified that the Department has received no documentation to support the need for a 1:1 setting.

As the necessity for additional units in a 1:1 unlicensed residential setting has not been demonstrated through documentation, the Respondent acted correctly in denying services in excess of the Appellant's annual budget.

CONCLUSION OF LAW

Policy states that an I/DD Waiver recipient seeking additional services through the “exceptions process” has the burden of showing that services in excess of the individualized budget are necessary to avoid a risk of institutionalization. To demonstrate this need, the person or his legal representative must provide a clear explanation on the “exceptions process” request as to which additional services are requested and why they are necessary to prevent a risk of institutionalization, and may provide documentation to support his or her position. All units of service must be prior 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, except to the extent services in excess of the individualized budget are approved pursuant to the procedures and standards in Section 513.25.4.2. All requests for more than an average of 12 hours per day of 1:1 services required BMS approval. Approval of this level of services will be based on demonstration of assessed need not on a particular residential setting.

As the Respondent could not determine the necessity of additional 1:1 unlicensed residential units based on information provided by the Appellant’s representatives, the Respondent acted correctly in denying 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 27th Day of June 2019.

**Pamela L. Hinzman
State Hearing Officer**