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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
1027 N. Randolph Ave
Elkins, WV 26241

Jolynn Marra
Interim Inspector General

December 16, 2021

[redacted]

RE: [redacted] v. WVDHHR
ACTION NO.: 21-BOR-2423

Dear [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
Certified State Hearing Officer
Member, State Board of Review

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

cc: Stacy Broce, Bureau for Medical Services
Janice Brown, KEPRO

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 21-BOR-2423**

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 [redacted]. 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 December 15, 2021, on an appeal filed November 22, 2021.

The matter before the Hearing Officer arises from the November 17, 2021 decision by the Respondent to deny requested service units under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by Ashley Quinn, Lead Provider Educator, KEPRO. Appearing as witnesses for the Respondent were Stacy Broce, Program Manager, I/DD Waiver Program, Bureau for Medical Services, and Lori Tyson, Assistant Program Manager, I/DD Waiver Program, Bureau for Medical Services. The Appellant was represented by his health care surrogate, Amy Bolyard, Social Service Worker II, WVDHHR. Appearing as witnesses for the Appellant were [redacted], Case Manager Supervisor, REM; [redacted], Case Manager, REM; [redacted], RN, REM; [redacted], Area Director, REM; [redacted], Behavior Support Professional, REM; [redacted], Program Director, REM; [redacted], Regional Director, REM; and [redacted], Direct Support Specialist, REM.

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

Department's Exhibits:

D-1 Notice of Decision dated November 17, 2021
D-2 Bureau for Medical Services Policy Manual §513.20.1

D-3 Bureau for Medical Services Policy Manual §513.17.4.1
D-4 Bureau for Medical Services Policy Manual §513.10.1
D-5 Bureau for Medical Services Policy Manual §513.10.2
D-6 Bureau for Medical Services Policy Manual §513.20.3
D-7 Bureau for Medical Services Policy Manual §513.20.2
D-8 Bureau for Medical Services Policy Manual §513.21.1
D-9 Bureau for Medical Services Policy Manual §513.21.3
D-10 Bureau for Medical Services Policy Manual §513.25.4.2
D-11 Bureau for Medical Services Policy Manual §513.8.1
D-12 Bureau for Medical Services Policy Manual §513.25.2
D-13 Exceptions Request Form – Request for Services Above the Budget dated November 3, 2021

Appellant's Exhibits:

None

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 a recipient of services under the I/DD Waiver Medicaid Program.

2) The Appellant's annual budget for service year October 1, 2021 through September 30, 2022 is $160,648 (Exhibits D-1 and D-13).

3) An Exceptions Request for services exceeding the Appellant's annual budget was submitted on behalf of the Appellant on November 3, 2021, requesting 35,035 units of Unlicensed Residential Person-Centered Support (PCS) 1:1 services. The Respondent approved the Appellant for 22,774 units of PCS 1:1 services (Exhibit D-13)

4) The Exceptions Request was submitted for 0 units of Unlicensed Residential PCS 1:2 units. The Appellant was approved for 12,261 units of PCS 1:2 units (Exhibit D-13).

5) The Exceptions Request was submitted for 4 units of Behavior Support Professional I- IPP Planning. The Appellant was approved for 0 units (Exhibit D-13).

6) The Exceptions Request was submitted for 260 units of Behavior Support Professional I services. The Appellant was approved for 0 units (Exhibit D-13).

7) The Exceptions Request was submitted for 4 units of Skilled Nursing by Registered Nurse-IPP Planning. The Appellant was approved for 0 units (Exhibit D-13).

8) The Exceptions Request was submitted for 191 units of Skilled Nursing by Registered Nurse. The Appellant was approved for 0 units (Exhibit D-13).

9) The Exceptions Request was submitted for 70 units of Skilled Nursing by LPN 1:1. The Appellant was approved for 5 units.

10) The Exceptions Request was submitted for 9,600 units of Transportation: Miles. The Appellant was approved for 0 units (Exhibit D-13).

11) The Exceptions Request was submitted for 1 unit of Transportation: Trips. The Appellant was approved for 0 units (Exhibit D-13).

12) The Respondent issued a Notice of Denial on November 17, 2021, advising the Appellant that unapproved units had been denied because the individual had not shown that waiver services that could be purchased within the budget were insufficient to prevent a risk of institutionalization (Exhibit D-1).

13) Had all requested services in the November 2021 Exceptions Request been approved, the Appellant would have exceeded his annual budget by $44,456.86.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual Sections 513.20.1- Skilled Nursing Licensed Practical Nurse (Traditional Option), 513.17.4.1- Unlicensed Residential Person-Centered Support (Traditional Option), 513.10.1- Behavior Support Professional I and II (Traditional Option), 513.10.2- Behavior Support Professional I and II, Individual Program Planning (Traditional Option), 513.20.3- Skilled Nursing Licensed Practical Nurse, Individual Program Planning (Traditional Option), 513.20.2- Skilled Nursing Licensed Registered Nurse (Traditional Option), 513.21.1- Transportation Miles (Traditional Option) and 513.21.3- Transportation Trips (Traditional Option) (Exhibits D-2 through D-9) state the following:

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

Section 513.8.1 of the Manual (Exhibit D-11) states the Interdisciplinary Team (IDT) participates in the IDT meeting for the purpose of review of assessments or evaluations, discussion of recommendations or individualized needs, identification of resources or methods of support, outline of service options and training goals, and preparation of interventions or strategies necessary to implement a person-centered plan within the member's individualized budget. 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 member. The member and the legal representative may want the member to live in a certain setting or even live alone, but if the individualized assessed budget does not provide enough supports for these settings, then the member 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 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.

Section 513.25.4.2 of the Manual (Exhibit D-10) describes the process in determining a participant's I/DD Waiver Program budget.

Service Authorization Process

The Utilization Management Contractor (UMC) will conduct the functional assessment up to 90 days prior to each person's anchor date. If determined medically eligible, the person or their legal representative and Service Coordination provider will receive an individualized budget calculated pursuant to the methodology described below. Once the person's budget has been calculated, the person will receive a notice each year that sets forth the person's individualized budget for the Individualized Program Plan (IPP) year and an explanation for how the individualized budget was calculated. The UMC, the person, the legal representative, the service coordinator, and any other members of the Interdisciplinary Team (IDT) that the member wishes to be present will attend the annual assessment. The UMC will work with the person and his or her team to complete three forms: the Inventory for Client and Agency Planning (ICAP), the Adaptive Behavior Assessment System II (ABAS II) and the Structured Interview.

The person and/or his legal representative shall sign an acknowledgment that they participated in the assessment and were given the opportunity to review and concur with the answers recorded during the assessment. If the person or his legal representative declines to sign the acknowledgment for any reason (e.g., he or she does not believe the answers were recorded accurately), the person or their legal representative shall notify the UMC through their service coordinator within 5 days of the assessment date, and the UMC shall resolve the issue by conferring with the person and/or the legal representative to come to an agreement on the answers on the assessment. If the person or their legal representative still disputes the answers on the assessment, then the issue can be appealed through a Medicaid Fair Hearing.

Exceptions Process

The IDT has an obligation to make every attempt to purchase services it deems necessary within the individualized budget. If the IDT determines after careful consideration that funds beyond the individualized budget are still necessary to avoid a risk of institutionalization, the person and/or the legal representative (or the Service Coordinator on their behalf), after consultation with the IDT, may submit a request for services in excess of the budget to BMS through the UMC web portal, along with any supporting documentation.

If the person or his or her legal representative believes services in excess of the budget are necessary, they will fill out an additional section of the IPP that reflects all the additional services that person or his or her legal representative believes the person needs. Even if the IDT believes

that services in excess of the budget are necessary, the IDT must complete the primary section of the IPP and specify services that can be purchased within the person's individualized budget. No services for the IPP year will be authorized unless this primary section is completed. The person or their legal representative must sign off on the request for services in excess of the budget. Services requested in excess of the budget, described in the additional section of the IPP, cannot be authorized unless and until an exception is approved through the exceptions process.

An "exceptions process" request for services exceeding the person's individualized budget is clinically researched and reviewed by BMS. Such request may also be negotiated between the person or their legal representative, the Service Coordinator/IDT and BMS. A panel of three individuals employed by DHHR or its contractor will review the "exceptions" request to determine if any errors were made in the service authorization process, including if any technical errors were made in the assessment, and/or if funds in excess of the budget are needed to purchase clinically appropriate services necessary to prevent a risk of institutionalization. At least one individual on the panel will have medical training. A decision will be made by the Exceptions Panel within 20 business days after the Exceptions Panel has received submission explaining the basis for the exceptions request with any/all supporting documentation.

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. All documentation must be attached/enclosed/provided if the person would like BMS to consider such documents in making its decision during the "exceptions process." Referring to documents on the "exceptions process" form is NOT sufficient; any documents the person would like BMS to consider must be attached to the "exceptions process" form and specific sections highlighted for BMS to review.

In determining whether the person has met his or her burden to receive services in excess of the budget, the three-person panel shall consider, among other things:

- The person's most recent ICAP, Structured Interview, and all IPPs from the current year.
- Any information provided by the person in his or her application for an exception.
- The feasibility of rearranging services within the person's budget.
- The availability of less expensive services that can be substituted for more expensive services.
- The availability of services covered outside the IDDW program by Medicaid or by private insurance.
- The natural supports (if any) available to the person, and limitations on those supports.

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. If BMS determines that the person did not demonstrate that funds in excess of the individualized budget are necessary to avoid a risk of

institutionalization, BMS will not authorize funds in excess of the budget. If BMS determines that an error was made in the service authorization process, it will take the steps necessary to correct the error.

If during the "exceptions process", BMS determines there was not an error, or that the requested additional services and funding are not warranted, a Letter of Denial will be sent to the person or their legal representative, which will include an explanation as to why the services(s) and funding were denied, how to file for a Medicaid Fair Hearing and free legal services available. All decisions during the "exceptions process" shall be reviewed and/or issued by BMS.

Section 513.25.2 of the manual (Exhibit D-12) states that 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 or services unable to be purchased, 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.

DISCUSSION

An I/DD Waiver participant's budget is determined annually based upon the budget methodology outlined in policy as determined by the participant's functional assessment. If services cannot be purchased within the participant's annual budget, policy allows for the submission of an Exceptions Request to determine if services exceeding the assigned budget are necessary to prevent institutionalization of the I/DD Waiver participant.

The Respondent denied the Appellant's November 2021 Exceptions Request for additional service units as documentation did not support that units in excess of the budget were necessary to prevent the Appellant's institutionalization.

The Appellant does not currently have a roommate and his witnesses testified that he should remain in a 1:1 setting for his own safety and the safety of others, as he has displayed maladaptive behaviors and become physically aggressive with previous roommates. His behaviors have included, but are not limited to, kicking, hitting and scratching. [redacted], Case Manager Supervisor, testified about the Appellant's increased aggression and behavior incidents when he is placed in a living situation with a roommate, stating that the Appellant becomes a danger to himself and others. [redacted] testified that REM's attempts to find alternative placement for the Appellant have been unsuccessful because no location will accept him due to his well-known behavioral history. She contended that the Appellant's condition would decline if he is placed in a roommate setting, which could put him in danger of hospitalization. [redacted] testified that the Appellant has no natural support system. [redacted], Behavior Support Professional, testified about the Appellant's behaviors, indicating that the Appellant is very territorial and becomes

abusive to roommates. [redacted] stated that the Appellant is much calmer when he has no roommate, and indicated that the Appellant has had consistent staffing for several years.

The Exceptions Request had also included requests for Skilled Nursing services for monitoring medications and health needs, completing assessments, planning medical treatments, reviewing data and training staff. Behavior Support Professional services were requested for completing documentation, training, developing protocols and planning services. Transportation Miles and Trips were requested to transport the Appellant to and from community locations, medical appointments, and other travel to meet goals and training.

The Respondent's witnesses testified that there was no documentation to demonstrate that REM had made significant changes to its strategies to assist the Appellant with his behavioral issues, including coping skills. They indicated that no recent reports of major incidents involving the Appellant had been recorded in the Incident Management System.

Stacy Broce, Program Manager for the I/DD Waiver Program, testified that the Respondent is not opposed to approving funding requests made on behalf of the Appellant, but the Appellant's representatives did not provide sufficient documentation to justify the budget exceptions.

The individual seeking additional services through the exceptions process has the burden of demonstrating that services in excess of the individualized budget are necessary to avoid a risk of institutionalization. While the Appellant's witnesses testified about his problematic behaviors when paired with a roommate, no documentation of behaviors was provided during the hearing to support the need for additional units of Unlicensed Residential PCS 1:1, additional Skilled Nursing and Behavior Support Professional services and Transportation.

The Respondent's decision to deny additional services in excess of the Appellant's annual budget is affirmed.

CONCLUSIONS OF LAW

1) Policy allows for the approval of services exceeding an I/DD Waiver participant's approved annual budget if those services are necessary to reduce the participant's risk of institutionalization.

2) Evidence failed to demonstrate that the Appellant requires additional Unlicensed Residential Person-Centered Support 1:1 services, additional Skilled Nursing and Behavior Support Professional services and Transportation in excess of his individualized budget.

3) The Respondent correctly denied the Appellant's request for accommodation to receive services in excess of his annual I/DD Waiver Program budget.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's request for additional service units in excess of his individualized budget.

ENTERED this 16th day of December 2021.

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Pamela L. Hinzman
State Hearing Officer