



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

November 18, 2009

c/o -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on -----'s hearing held August 28, 2009. The hearing request was based on the Department of Health and Human Resources' denial of 96 speech therapy events through the Title XIX MR/DD Waiver Program.

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.

Eligibility for extended professional services through the MR/DD Waiver Program is based on current policy and regulations. Policy provides service limits for professional services, and the speech therapy service limit is set at four events per month. Prior authorization is required for more than four speech therapy events per month. Additionally, services selected must not exceed an individual's Waiver budget (MR/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for MR/DD Waiver Services*, §513.7.12).

Information submitted at the hearing established that speech therapy services were requested in excess of the service limits, that prior authorization for these services could not be given due to lack of information, and that the requested services would exceed the individualized Waiver budget.

It is the decision of the State Hearing Officer to **uphold** the Department's denial of 96 speech therapy events through the Title XIX MR/DD Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Steve Brady, Department Representative

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

-----,

Claimant,

v.

Action Number: 09-BOR-1311

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 18, 2009 for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on August 28, 2009 on a timely appeal, filed June 9, 2009.

II. PROGRAM PURPOSE:

The Medicaid Home and Community-Based MR/DD Waiver (authorized under Title XIX, Section 1915(c) of the Social Security Act) provides an alternative to services available in Intermediate Care Facilities for individuals with Mental Retardation or related conditions (ICF/MR). The primary purpose of an ICF/MR facility is to provide health and rehabilitative services. An ICF/MR facility provides services to persons who are in need of and who are receiving active treatment.

West Virginia's MR/DD Waiver Program provides for individuals who require an ICF/MR level of care, and who are otherwise eligible for participation in the program, to receive certain services in a home and/or community-based setting for the purpose of attaining independence, personal growth, and community inclusion.

III. PARTICIPANTS:

-----, Claimant's witness

-----, Claimant's witness

Steve Brady, Operations Coordinator, Title XIX MR/DD Waiver Program, DHHR

Randy Hill, Director, MR/DD Waiver Program, APS Healthcare

-----, RN, APS Healthcare

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to deny 96 speech therapy events under the Title XIX MR/DD Waiver Program to the Claimant.

V. APPLICABLE POLICY:

MR/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for MR/DD Waiver Services*, §513.7.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 MR/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for MR/DD Waiver Services*, §513.7.12

D-2 Notice of denial dated May 29, 2009

D-3 Therapy notes and documentation received by the Department

D-4 Individualized Waiver budget for -----

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of MR/DD Waiver Services for whom a request for speech therapy services was made. The Department evaluated this request and sent a notice of denial to the Claimant on or about May 29, 2009 (Exhibit D-2). The notice explains the reason for denial, in pertinent part, as:

APS Healthcare has completed a second level review of ARC of Three Rivers' purchase request on behalf of Title XIX MR/DD Waiver member ----- for 96 event units of 92526-HI Speech Therapist 1:1 service. This requested amount has been denied based upon documentation provided by the Service Coordinator, Andrew Dotson, which indicates the service to be used for routine speech therapy twice a week. The maximum units that can be authorized is 48.

- 2) Steve Brady, representative for the Department, presented the policy related to extended professional services provided through the MR/DD Waiver Program. The MR/DD Waiver Manual, Chapter 513, §513.7.12 (Exhibit D-1), effective November 1, 2007, states:

513.7.12 EXTENDED PROFESSIONAL SERVICES

PROCEDURE CODE:	Occupational Therapist 1:1 ratio 97530-GO-HI Therapeutic activities, direct (one-on-one) patient contact by the provider (use of dynamic activities to improve functional performance) each 15 minutes Physical Therapist 1:1 ratio 97530-GP-HI Therapeutic activities, direct (one-on-one) patient contact by the provider (use of dynamic activities to improve functional performance) each 15 minutes Speech Therapist 1:1 ratio 92507-GN-HI Treatment of speech, language, voice, communication, and/or auditory processing; event Speech Therapist 1:1 ratio 92526-HI Treatment of swallowing dysfunction and/or oral function for feeding; event Registered Dietician 1:1 ratio 97802-AE-HI Medical nutrition therapy; initial assessment and intervention, individual, face-to-face with the patient, each 15 minutes Psychologist Consultant 1:1 ratio T2025 Consultative services to a member's Therapeutic Consultant when there are complex behavioral issues present.
SERVICE UNITS:	15 minute units of service except for Speech Therapist which is an event code
SERVICE LIMITS:	Occupational Therapist, Physical Therapist, and Registered Dietician (30 units per month up to a maximum to 360 units annually. - Combined units with Occupational Therapist, Physical Therapist, Registered Dietician), Psychologist Behavioral Consult (4) units per year). Speech Therapist (4) events per month.

PAYMENT LIMITS:

Providers without credentials for their area of specialty may not provide the service. Psychologist Behavioral Consult (T2025) is limited to four (4) units per year. This service is a consult by a licensed psychologist on the behavioral support plan and may not be utilized for the purpose of training of direct care staff, families, or other Therapeutic Consultants or Extended Professionals.

PRIOR AUTHORIZATION:

Prior to November 1, 2006 refer to Section 513.9, 513.10.1, 513.10.2, 513.11.1, and 513.12.1. (Prior Authorization process). Effective with all annual IPP's conducted on or after November 1, 2006; the services will be selected by the member in conjunction with his/her IDT. The services must be based upon the assessed need and take into account the needs, wishes, desires, and goals of the member. Services selected must be within the boundaries of the individualized Waiver budget.

The ASO will register the selected service(s) with the claims agent. Services not registered with the claims agent will not be reimbursed. Prior Approval required for:

- Occupational Therapist, Physical Therapist, and Registered Dietician: for any combined units above 30 per month.
- Speech Therapist: above 4 events per month
- Psychologist Behavioral Consult, above 4 units per year

DEFINITION

Extended Professional Services are those provided directly to the member which would not otherwise be provided by an alternative source. Extended Professional Services include Physical Therapy, Occupational Therapy, Speech/Language Therapy, Registered Dietician Services and Specialized Consultation to a Therapeutic Consultant by a Licensed Psychologist.

Professional Services:

Core Job Functions:

Must be performed by a fully licensed, certified and/or registered (e.g., physical therapist, speech/language, occupational therapist, registered dietician). A Certified Occupational Therapy Assistant (COTA) or a Licensed Physician Therapist Assistant (PTA) are not considered an Extended Professional.

Professional services must have a 1:1 ratio and consist of:

- Physical therapy
- Occupational therapy
- Speech and language therapy
- Dietary services by registered dietician.
- Specialized Consultative Services to a Therapeutic Consultant by a Licensed Psychologist (Limited to a member who has rating of moderate, severe, or critical on the annual ICAP rating of maladaptive behaviors or member is in crisis, a functional analysis may be utilized to assess the member's maladaptive behaviors).

Professional services cannot be conducted concurrently with the same member (i.e. physical therapy and occupational therapy being implemented with the member concurrently).

SITE OF SERVICE FOR ALL EXTENDED PROFESSIONAL SERVICES

This service may be provided in the Extended Professional's office, the member's home or other community locations which provide the proper equipment and physical facilities to deliver the specific Extended Professional Services. It is the expectation of the extended professional to develop a home care plan.

DOCUMENTATION FOR ALL EXTENDED PROFESSIONAL SERVICES

A detailed progress note or evaluation report for each service is required. The documentation should include the description of the service, date, time spent, including start and stop times and signature and credentials of the extended professional. The service must be linked to a goal on the IPP for the therapy and an assessment of progress or lack of progress addressed in the documentation. Service units are to be rounded on a monthly basis, not daily or weekly.

- 3) Randy Hill testified that he is employed as the Director of the MR/DD Waiver Program for APS Healthcare, a company contracted by the Department to determine prior approval for MR/DD Waiver services and conduct individual assessments leading to individualized budgets for MR/DD Waiver services. He explained that his employer calculated the budget from which the Claimant's interdisciplinary team (IDT) may purchase services and support. Budgets are based on assessments and an algorithm that compares the needs of an individual with the needs of all other recipients of MR/DD Waiver services in the state. The proposed purchases of services and support are then subject to review for necessity.
- 4) -----, Registration Coordinator for APS Healthcare, testified that her job duties include reviewing purchase requests. She reviewed the request from the Claimant's IDT for 96 speech therapy units or events. Because the policy limit is set at four events per month, or 48 annually, the request for 96 exceeded the limit. She testified that requests for documentation of speech therapy services received by the Claimant in school, at home, and in the community, were not received. She testified that the request for 96 speech therapy events additionally exceeded the Claimant's individualized budget.
- 5) Randy Hill testified that without the requested speech therapy, the Claimant had already exceeded the individualized budget (Exhibit D-4) by \$20,262.64. He referred to a handwritten timeline on Exhibit D-4, testifying that three separate requests for 96 speech therapy events were submitted. The initial request was closed, noting that the Claimant may resubmit for 48 events and receive approval. When subsequent requests for 96 events were submitted, documentation was requested of the Claimant to establish the amount of speech therapy needs that were being provided in the Claimant's school, home, and community. When this documentation was not received following either request, the denial notice (Exhibit D-2) was issued to the Claimant. He testified that the Department did receive information (Exhibit D-3) on the Claimant's behalf, but that it was not the information requested.
- 6) -----, the Claimant's mother and representative, testified that the Claimant is nonverbal, and has received twice-weekly speech therapy services for "two or three years." She testified that the therapy is helping with the Claimant's receptive language skills. She testified that the Claimant's Speech Therapist and Pediatrician both recommended that the Claimant's speech therapy continue twice-weekly to prevent regression. -----, representative from ARC of Three Rivers – the Claimant's service provider – testified that the Claimant has made progress with speech therapy, but cannot communicate. She testified that the Claimant receives some speech therapy services through the school system, but could not specify the amount.

VIII. CONCLUSION OF LAW:

- 1) Policy for the MR/DD Waiver Program provides service limits for speech therapy, requires prior authorization to exceed those service limits, and dictates that services selected must not exceed the individualized budget for a member. The Claimant requested services that both exceeded the service limits and his individualized budget. The Department's contract agency clearly established that the documentation needed to consider prior authorization to exceed the service limit was not received. The action to deny 96 speech therapy events was correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny 96 speech therapy events to the Claimant through the MR/DD Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of November, 2009.

Todd Thornton
State Hearing Officer