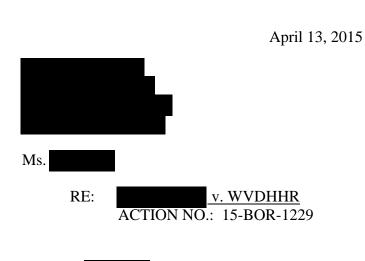


STATE OF WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES OFFICE OF INSPECTOR GENERAL BOARD OF REVIEW 9083 Middletown Mall White Hall, WV 26554

Karen L. Bowling Cabinet Secretary



Dear Ms.

Earl Ray Tomblin

Governor

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,

Thomas E. Arnett State Hearing Officer Member, State Board of Review

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

cc: Taniua Hardy, BMS

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES BOARD OF REVIEW

Claimant,

v.

Action Number: 15-BOR-1229

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 **better**. 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 April 9, 2015, on an appeal filed February 2, 2015.

The matter before the Hearing Officer arises from the January 16, 2015 decision, amended on April 8, 2015, by the Respondent to deny Claimant's request for Medicaid I/DD Waiver Program services that exceed the individualized participant budget.

At the hearing, the Respondent appeared by particular and the hearing as witnesses for the Department were presented by particular and the transmission of the Claimant was represented by particular and the transmission of the Claimant were presented by particular and the transmission of the Claimant were presented by particular and the transmission of the Claimant were presented by particular and the transmission of the tr

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

Department's Exhibits:

- D-1 Notice of Denial dated January 16, 2015, amended on April 16, 2015
- D-2 APS Healthcare 2nd Level Negotiation Request dated January 7, 2015
- D-3 Service Authorization Request including budget year December 1, 2014 November 30, 2015
- *D-12 I/DD Waiver Manual, Chapter 513 Covered Services, Limitations, and Exclusions for I/DD Waiver Services, §513.9.1.10 Respite: Traditional Option and §513.9.1.10.1 Respite: Agency: Traditional Option

* Exhibits D-4 through D-11 were not submitted into evidence by Respondent.

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

- 2) The Claimant, through her representatives, contended that the requested respite services by (1,000 units) are necessary because Mr. The service is the only living parent in the home to provide care for the Claimant. Mr. The experienced some health issues toward the end of the last budget year and underwent a medical procedure that subsequently required him to be hospitalized. Without this service, the Claimant would not have had oversight while Mr. The was hospitalized. In addition, the respite service through the was requested to provide oversight by someone outside of the home and to enable Mr.

Specific to the request for **and the provide respite services** 1:1, 1:2 and 1:3, the Claimant's medical issues (seizure disorder and hypoglycemia) have prompted **and the provide her with staff during her bus transit to day habilitation.** While the Claimant is verbal, the concern is that she may not be able to recognize the onset of symptoms. The request for the different Respite staffing ratios was made to address those occasions when staff would accompany more individuals than just the Claimant on the bus, as billing codes would be different.

3) As a matter of record, Respondent acknowledged that the Claimant has already been approved for services that exceed her individualized budget by more than \$16,000. Respondent noted that the 1,000 units of respite requested by **Services** was denied because the Claimant is currently out of her home 35 hours per week (attending day habilitation six (6) hours per day and time associated with transportation) which gives Mr. **Services** time through the week to attend medical appointments. Respondent noted that the Claimant can request additional respite units during the budget year if a situation develops, but services cannot be approved as a precautionary measure. Specific to the **Services** that the Claimant was approved for the services that best serve her needs, while considering her individualized budget amount. Respondent further noted that respite services, by definition, were not appropriate while the Claimant was in transit.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.10.1 *Respite: Agency: Traditional Option* – includes agency services provided by awake and alert staff are specifically designed to provide temporary substitute care normally provided by a family member or a Specialized Family Care Provider. The services are to be used for relief of the primary care-giver(s) to help prevent the breakdown of the primary care-giver(s) due to the physical burden and emotional stress of providing continuous support and care to the defendant member. Respite Services consist of temporary care services for an individual who cannot provide for all of their own needs.

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.16.2 *Transportation: Trips: Traditional Option* – states that transportation services are provided to the I/DD Waiver member in the I/DD Waiver provider's mini-van or mini-bus for trips to and from the member's home, licensed Facility-based Day Habilitation Program or Supported Employment site or to the site of a planned activity or service which is addressed on the IPP and based on assessed need. A trip may be billed concurrently with Person-Centered Support Services, Respite, Supported Employment and Facility-Based Day Habilitation. The amount of service is limited by the member's individualized budget.

DISCUSSION

The regulations that govern the Medicaid I/DD Waiver Program dictate that respite services can be delivered concurrently with transportation services; however, policy also stipulates that transportation and respite services are limited by the individualized budget. While Respondent acknowledged that it has already approved I/DD services for the Claimant that exceed her individualized budget by more than \$16,000, the Board of Review does not possess the authority to change policy established by the Medicaid agency.

CONCLUSIONS OF LAW

Respondent's decision to deny the Claimant's request for prior authorization of respite services that exceed her individualized annual budget is supported by the regulations.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's request for prior authorization of respite services in excess of the Claimant's individualized budget.

ENTERED this ____ Day of April 2015.

Thomas E. Arnett State Hearing Officer