



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

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

April 13, 2015

[REDACTED]
Ms. [REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1229

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,

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

_____ ,

V.

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

INTRODUCTION

At the hearing, the Respondent appeared by [REDACTED], APS Healthcare. Appearing as witnesses for the Department were [REDACTED], APS Healthcare, and Taniua Hardy, Bureau for Medical Services (BMS). The Claimant was represented by [REDACTED], [REDACTED]. Appearing as witnesses for the Claimant were [REDACTED], Claimant's father/guardian; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED], [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

* 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

- 1) On January 16, 2015, and again on April 8, 2015 (amended notice) the Claimant was notified (D-1) that her request for [REDACTED] to provide respite (agency) services 1:1 (375 units), respite 1:2 (375 units), respite 1:3 (350 units), as well as [REDACTED] respite services 1:1 (1,000 units) was denied. While some units of Respite were approved ([REDACTED] - 1:1 28 units, 1:2 32 units, 1:3 29 units and [REDACTED] - 1:1 84 units), the denial notice indicates that the Claimant's individualized annual budget would be exceeded if the requested amounts were approved.
- 2) The Claimant, through her representatives, contended that the requested respite services by [REDACTED] (1,000 units) are necessary because Mr. [REDACTED] is the only living parent in the home to provide care for the Claimant. Mr. [REDACTED] 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. [REDACTED] was hospitalized. In addition, the respite service through [REDACTED] was requested to provide oversight by someone outside of the home and to enable Mr. [REDACTED] to attend medical appointments.

Specific to the request for [REDACTED] to provide respite services 1:1, 1:2 and 1:3, the Claimant's medical issues (seizure disorder and hypoglycemia) have prompted [REDACTED] to 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 [REDACTED] 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. [REDACTED] 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 [REDACTED] respite request for staff to accompany the Claimant while in transit, Respondent indicated 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**