



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St., Suite 307
Fairmont, WV 26554**

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

July 20, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1969

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

cc: Taniua Hardy, BMS

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

██████████,

Appellant,

v.

Action Number: 15-BOR-1969

**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 ██████████. 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 July 16, 2015, on an appeal filed May 4, 2015.

The matter before the Hearing Officer arises from the April 15, 2015 decision by the Respondent to deny Appellant's request for Medicaid I/DD Waiver Program services that exceed her individualized budget.

At the hearing, the Respondent appeared by ██████████, Provider Educator, APS Healthcare. Appearing as a witness for the Department was Taniua Hardy, Bureau for Medical Services (BMS). The Appellant was represented by her mother, ██████████ and friend, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated 4/15/15
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.1.8.2 – Person-Centered Support: Family: Traditional Option
- D-3 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.9.10.1 – Respite: Agency: Traditional Option
- D-4 APS Healthcare 2nd Level Negotiation Request dated 4/4/15
- D-5 Care Connection authorized purchased services/budget year 3/1/15 – 2/29/16
- D-6 Care Connection authorized purchased services/budget year 3/1/14 – 2/28/15
- D-7 APS Care Connection Inventory for Client and Agency Planning (ICAP) – 12/17/14
- D-8 APS Care Connection Inventory for Client and Agency Planning (ICAP) – 11/13/13

- D-9 Assessment Signature Page dated 12/17/14
- D-10 Assessment Signature Page dated 11/13/13
- D-11 Respondent Rights and Responsibilities dated 12/17/14
- D-12 Respondent Rights and Responsibilities dated 11/13/13

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 an active recipient of Medicaid I/DD Waiver Program benefits and services.
- 2) In response to a Second Level Negotiation Request (D-4) submitted on April 4, 2015 for 13,000 units of Person-Centered Support Family 1:1 (PCS-Family) and 2,400 units of Respite 1:1, Respondent notified the Appellant (D-1) that only 3,924 PCS-Family units and 2,200 of Respite were approved. The notice indicates that the request was denied because approval would exceed or has exceeded the Appellant's individualized budget.
- 3) Exhibit D-5 reveals that the Appellant's current individualized annual budget allocation was set at \$22,842.15 - a decrease from the previous year (D-6) by almost \$5,000. The decrease in budget was supported by the Appellant's Inventory for Client and Agency Planning (ICAP) scores (Exhibits D-7 and D-8), which reflect improvement in the Appellant's assessed needs. Respondent noted that pursuant to I/DD Waiver Program policy, approvable service units – Respite and PCS-Family – are limited by the individualized budget. If service units requested by the Appellant would have been approved, her individualized budget would have been exceeded by \$25,868.85. As a result, the Second Level Negotiation Request was denied. It should be noted, however, that the annual budget allocation may be adjusted (increased or decreased) if there are documented changes in the member's assessed needs.
- 4) Appellant's mother proffered testimony to indicate that the decrease in services (PCS-Family and Respite) from the previous year will preclude her from working full-time. Respondent offered rebuttal testimony to indicate that the Appellant could modify service coordination and services to maximize the Appellant's budget. According to Respondent, these measures could provide the additional hours of Respite needed to support Appellant's mother with employment outside of the home.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 – §513.9.1.8.2 *Person-Center Support: Family: Traditional Option*: Person-Centered Support (PCS): Family consists of individually tailored training and/or support activities that enable the member to live and inclusively participate in the community in which the member resides, works, receives their education, accesses health care, and engages in social and recreational activities. The activities and environments are designed to increase the acquisition of skills and appropriate behavior that are necessary for the member to have greater independence, personal choice and allow for maximum inclusion into their community. The amount of service is limited by the member's individualized budget. The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.

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 normal 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 dependent member. Respite Services consist of temporary care services for an individual who cannot provide for all of their own needs. The amount of service is limited by the member's individualized budget. The annual budget allocation may be adjusted (increased or decreased) only if changes have occurred regarding the member's assessed needs.

DISCUSSION

Evidence submitted at the hearing reveals that an I/DD Waiver Program member's annual budget allocation is determined by his or her assessed needs. The regulations that govern the Medicaid I/DD Waiver Program stipulate that PCS-Agency and Respite services cannot exceed the individualized budget of the recipient unless the member's needs have changed. Whereas there was no evidence to indicate the Appellant's assessed needs have changed, Respondent has acted within regulatory guidelines in its decision to deny the Appellant's Second Level Negotiation Request for services in excess of her current individualized annual budget.

CONCLUSION OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for prior authorization of PCS-Family and Respite services that exceed her individualized annual budget.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Appellant's Second Level Negotiation request for I/DD Medicaid payment of PCS-Family and Respite services in excess of the Appellant's individualized budget.

ENTERED this ____ Day of July 2015.

**Thomas E. Arnett
State Hearing Officer**