



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
4190 Washington Street, West  
Charleston, West Virginia 25313**

**Earl Ray Tomblin  
Governor**

**Karen L. Bowling  
Cabinet Secretary**

July 21, 2015



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1977

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 Official 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,

Donna L. Toler  
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**

[REDACTED],

**Appellant,**

v.

**Action Number: 15-BOR-1977**

**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 July 17, 2015, on an appeal filed May 4, 2015.

The matter before the Hearing Officer arises from the April 2015 decision by the Respondent to deny Appellant's request for Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program services that exceed the individualized participant budget.

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

**Department's Exhibits:**

- D-1 Notice of Denial, dated April 17, 2015
- D-2 I/DD Waiver Policy Manual, §513.9.2.3.2
- D-3 I/DD Waiver Policy Manual, §513.9.2.3.3
- D-4 Service Authorization - 2<sup>nd</sup> Level Negotiation Request, dated April 6, 2015
- D-5 APS Healthcare Purchase Request Details, Budget Year March 17, 2015 through March 16, 2016
- D-6 APS Healthcare Inventory for Client and Agency Planning

**Appellant's Exhibits:**

- A-1 Correspondence from [REDACTED] to APS Healthcare, dated April 6, 2015

- A-2 Psychological Evaluation completed by [REDACTED], Ph.D. dated August 3, 2011
- A-3 Functional Assessment and Positive Behavior Support Plan for School Setting by [REDACTED], MA LPC LSW CBIS, dated January 4, 2012
- A-4 Positive Behavior Support Plan - Draft, dated September 5, 2013
- A-5 Behavior Intervention Plan for Appellant, undated
- A-6 Summary of Behavioral Treatment of Appellant by [REDACTED], dated April 3, 2015
- A-7 Notice of Disciplinary Actions, dated May 12, 2011 and June 4, 2012, and Incident Summary, dated May 16, 2014
- A-8 West Virginia Bureau for Medical Services/APS Care Connection for Title XIX I/DD Waiver Extraordinary Care Needs Assessment, dated March 3, 2009
- A-9 Inventory for Client and Agency Planning, dated March 3, 2009
- A-10 West Virginia Bureau for Medical Services/APS Care Connection for Title XIX I/DD Waiver Extraordinary Care Needs Assessment, dated December 2, 2009
- A-11 West Virginia Bureau for Medical Services/APS Care Connection for Title XIX I/DD Waiver Extraordinary Care Needs Assessment, dated December 2, 2011
- A-12 West Virginia Bureau for Medical Services/APS Care Connection for Title XIX I/DD Waiver Extraordinary Care Needs Assessment, dated December 6, 2012
- A-13 West Virginia Bureau for Medical Services/APS Care Connection for Title XIX I/DD Waiver Extraordinary Care Needs Assessment, dated December 31, 2013
- A-14 Inventory for Client and Agency Planning, dated December 2, 2009
- A-15 West Virginia Bureau for Medical Services/APS Care Connection for Title XIX I/DD Waiver Extraordinary Care Needs Assessment, dated February 8, 2011
- A-16 Inventory for Client and Agency Planning dated December 31, 2013
- A-17 West Virginia Bureau for Medical Services/APS Care Connection for Title XIX I/DD Waiver Extraordinary Care Needs Assessment, dated December 2, 2014
- A-18 Purchase Request and Budget Detail printouts for Budget Years 2009 through 2016
- A-19 Summary of ICAP/ABAS II Assessments for 2009 through 2015
- A-20 Utilization Management Sheets, dated March 17, 2014 through March 16, 2015
- A-21 Current Behavior Medications list for Appellant

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 Official sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant is a recipient of benefits and services through Title XIX Medicaid Intellectual and Developmental Disabilities Waiver Program (I/DD Program).
- 2) On April 6, 2015, a second-level request for 11680 units of Person-Centered Supports, Personal Options and 6912 units of Respite, Personal Options was submitted on the Appellant's behalf under the I/DD Program. The second-level request included a list of

additional documents attached to support the clinical need for the requested services. (Exhibit D-4)

- 3) The Respondent issued a Notice of Denial on April 17, 2015, advising the Appellant that the requested units were denied because the Appellant's annual budget would have been exceeded or had been exceeded. (Exhibit D-1)
- 4) The Respondent had no record that the additional information attached to the second-level negotiation request was reviewed prior to the issuance of its decision to deny the Appellant's request for additional service units. (Exhibit D-4)
- 5) The additional requested service units would have exceeded the Appellant's assessed annual budget by \$14,747.76. (Exhibits D-4 and D-5)
- 6) The Appellant's current annual budget is \$42,074.02. In order not to exceed the Appellant's assigned annual budget, only 8988 of the requested units of Person-Centered Services, Personal Options and 4221 of the requested units of Respite, Personal Options can be approved by the Department. (Exhibit D-1)

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, §§513.9.2.3.2 and 513.9.2.3.3 state that all units of Person-Centered Support, Personal Options and Respite, Personal Options services must be prior authorized before being provided. Prior authorizations are based on assessed need and services must be within the member's individualized budget. The budget allocation may be adjusted only if changes have occurred regarding the member's assessed needs.

### **DISCUSSION**

The evidence presented showed that the Appellant's annual budget was determined to be \$42,074.02, for the budget year March 17, 2015 through March 16, 2016. The additional requested units of the aforementioned services exceeded the Appellant's annual budget by \$14,747.76, according to the Department's representative.

The Appellant provided testimony that documentation listed on and attached to the second-level negotiation request demonstrated that the Appellant has an increased need for assistance. The Department's representative testified that it was without knowledge whether the Department considered the attached documentation when it issued its decision to deny the Appellant's request for additional units of services, but that it appeared it did not. The Department's representative testified that documentation not correctly uploaded to the Care Connection database would not be considered by the Department when arriving at decision to deny. She indicated the Department does not have the time to track down documentation which is not properly saved to the Care Connection database system even if it is listed as an attachment on the second-level negotiation request.

The notice of decision issued by the Department on April 17, 2015, indicated that the second-level negotiation request dated April 6, 2015, was relied upon by the reviewers in making their decision to deny the Appellant's request for additional services. Because policy permits a participant's budget to be adjusted in circumstances where the participant demonstrates an increased need, the Department erred by failing to review the documentation which was attached to the second-level negotiation request in support of the Appellant's clinical need for the requested services prior to issuing its decision.

### **CONCLUSIONS OF LAW**

- 1) The requested additional Person-Centered Supports, Personal Options and Respite, Personal Options service units would exceed the Appellant's annual budget for the budget year March 17, 2015 to March 16, 2016.
- 2) Per policy, the Appellant cannot exceed his annual budget allocation for the requested services unless the Appellant demonstrates an increase in assessed need. The Department failed to evaluate whether the Appellant demonstrated an increased need by failing to review documentation which was attached to the second-level negotiation request to support the clinical need for the requested services.

### **DECISION**

It is the decision of the State Hearing Official to hereby **remand** the matter to the Department for re-evaluation of the Appellant's April 6, 2015 second-level negotiation request to include all documentation listed and attached to the request. Following the re-evaluation, the Department shall notify the Claimant of its decision, which shall include the right to a Fair Hearing.

**ENTERED this 21<sup>st</sup> day of July 2015.**

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**Donna L. Toler, State Hearing Officer**