



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

October 21, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2755

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,

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, Department Representative

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2755

**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 October 21, 2015, on an appeal filed August 7, 2015.

The matter before the Hearing Officer arises from the July 27, 2015 decision by the Respondent to deny Appellant's request for services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Taniua Hardy, Bureau for Medical Services. Appearing as witnesses for the Respondent were ██████████, APS Healthcare, ██████████, APS Healthcare, and ██████████, APS Healthcare. The Appellant was present for a portion of the hearing and was represented by her guardian, ██████████. Appearing as witnesses for the Appellant were ██████████, ██████████ Supervisor, ██████████, ██████████ Service Coordinator and ██████████, ██████████ Program Coordinator/Direct Service Provider. The Appellant and ██████████ only attended a portion of the hearing and provided no testimony. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial, dated July 27, 2015
- D-2 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.8.1
- D-3 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §513.9.1.12.1
- D-4 Service Authorization 2ND Level Negotiation Request, dated June 15, 2015

D-5 APS CareConnection Purchase Request Details computer screen print for the budget year June 1, 2015 through Mary 31, 2016

Appellant's Exhibits:

None

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 a participant in the I/DD Waiver Program.
- 2) The Appellant submitted a second-level negotiation request for services through the I/DD Waiver Program on June 5, 2015. The services requested included 16,952 units of Person-Centered Supports (PCS) - Agency (1:1), 10,000 units of PCS - Agency (1:2) and 8,760 units of Skilled Nursing – LPN (1:1) (“LPN”). (Exhibit D-4)
- 3) The Respondent notified the Appellant of its decision to deny the full amount of requested service units, offering reasons for denial as “approval would exceed or has exceeded the member’s Individualized Waiver Budget” (Exhibit D-1).
- 4) The Respondent’s notification to the Appellant indicated 5,560 units of PCS - Agency (1:1), 29,480 units of PCS-Agency (1:2) and 2,920 LPN units were approvable (Exhibit D-1).
- 5) The full amount of units requested would result in the Appellant exceeding her assigned budget for the year starting June 1, 2015, in the amount of \$72,531.43.
- 6) The Appellant requires 24-hour care. The approvable units represented a total of 26 hours of care, 24 hours of PCS-Agency (1:1), PCS - Agency (1:2) and two (2) hours of LPN (1:1) care. (Exhibit D-4).

APPLICABLE POLICY

West Virginia Medicaid Regulations, §513.9.1.8.1 states that all units of Person-Centered Support: Agency 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.

West Virginia Medicaid Regulations, §513.9.1.12.1 states that all units of Skilled Nursing: LPN 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 \$158,231.51 for the budget year June 1, 2015 through May 31, 2016. The additional requested units of the aforementioned services exceeded the Appellant's annual budget by \$72,531.53, according to the Department's representative.

The Appellant's representative, [REDACTED], testified that the Appellant requires supervision twenty-four hours per day, which the Appellant is currently receiving. Ms. [REDACTED] added that she understood that there were budget cuts, but felt the additional care was necessary.

The Appellant's witness, [REDACTED], testified that because the Appellant is housed in a three-person setting, it was not possible for all the members to utilize (1:2) staff. The Department's representative stated that there currently were no (1:3) services being billed and that the budget was approved to best meet the needs of the Appellant.

There was no evidence presented to show that the Appellant demonstrated changes resulting in an increased need of services since her annual assessment, upon which her current budget is based. The requested units would place the Appellant over her current annual budget. The Department's decision to deny the Appellant's request for prior authorization of PCS-Agency (1:1) and LPN (1:1) services that exceed the individualized annual budget was within policy guidelines.

CONCLUSION OF LAW

Because the Appellant's request for services through the I/DD Waiver Program would cause her to exceed her assigned budget, the Respondent must deny the Appellant's request.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's denial of Appellant's request for second-level services through the I/DD Waiver Program.

ENTERED this ____ Day of October 2015.

**Donna L. Toler
State Hearing Officer**