



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

June 3, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1697

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, BMS, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1697

**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 May 19, 2016, on an appeal filed April 13, 2016.

The matter before the Hearing Officer arises from the March 30, 2016 decision by the Respondent to deny the Appellant's request for services under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by ██████████, Registration Coordinator, ██████████. Appearing as a witness for the Respondent was Taniua Hardy, Program Director, Bureau for Medical Services. The Appellant appeared pro se. Appearing as witnesses for the Appellant were ██████████, Social Worker, WVDHHR; ██████████, Service Coordinator, ██████████; ██████████, Senior Quality Support Associate, ██████████; and ██████████, Executive Director, ██████████.

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

Department's Exhibits:

- D-1 Notice of Denial dated March 30, 2016
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.17

- D-3 Service Authorization 2nd Level Negotiation Request dated March 21, 2016, and Order from [REDACTED] County Magistrate's Office
- D-4 [REDACTED] Purchase Request Details

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 March 30, 2016, the Appellant was notified (D-1) that his request for services under the I/DD Waiver Medicaid Program was denied. The notice indicates that the Appellant requested 14,395 units of Unlicensed Residential Personal Care Services (PCS) (1:1) and was approved for 0 hours. The notice also states that the Appellant requested 0 units of Unlicensed Residential PCS (1:2) and was approved for 14,420 units.
- 2) [REDACTED], Registration Coordinator with [REDACTED], represented the Department and testified that the Appellant's annual I/DD Waiver Program budget for the budget year ending May 31, 2016 is \$138,931.81 (see Exhibit D-4). Mr. [REDACTED] stated that the Appellant would have exceeded his annual budget by \$59,345.96 had all of the requested services been authorized.
- 3) [REDACTED], Service Coordinator with [REDACTED], testified that the Appellant's witnesses understand the regulations; however, the Appellant's circumstances changed after his last assessment. The Appellant was charged with First-Degree Sexual Assault of a female, and an [REDACTED] County Magistrate's Order (D-4) indicates that the Appellant must have a male worker present at all times and must not reside with other clients while out of jail on bond. The Appellant reportedly has no natural familial supports.
- 4) Taniua Hardy, Program Director, Bureau for Medical Services, testified that the Department is not required to follow a local magistrate's order to operate the I/DD Waiver Program in any particular manner. She stated that the Appellant could reside in a two-person situation with a male and the staffing ratio would still be met.

APPLICABLE POLICY

I/DD Waiver Manual, Chapter 513.17.4.1 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*- Unlicensed Residential Person-Centered Support (Traditional Option) (D-2):

All units of service must be authorized before being provided. Prior authorizations are based on assessed need as identified on the annual functional assessment, and services must be within the individualized budget of the person who receives services. 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 recipient's annual budget is determined *by his or her assessed needs on the annual functional assessment*. The amount of services is limited by the member's individualized budget. The Appellant's need for 1:1 staffing in a setting away from other clients is the result of his legal problem - not an issue that was identified on his annual functional assessment. Therefore, the Department acted correctly in denying services in excess of the Appellant's annual budget.

CONCLUSIONS OF LAW

Evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request for Unlicensed Residential Personal Care Services (PCS) (1:1) under the I/DD Waiver Medicaid Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Appellant's services under the I/DD Waiver Medicaid Program.

ENTERED this 3rd Day of June 2016.

Pamela L. Hinzman
State Hearing Officer