



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

February 18, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3299

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3299

**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 February 16, 2016, on an appeal filed October 20, 2015.

The matter before the Hearing Officer arises from the October 5, 2015, decision by the Respondent to deny the requested units of Behavior Support Professional, Behavior Support-IPP Planning, Facility Based Day Habilitation and Transportation-Trips under the I/DD Waiver program.

At the hearing, the Respondent appeared by Craig Kelly, APS Healthcare. Appearing as a witness for the Respondent was Taniua Hardy, Bureau for Medical Services. The Appellant appeared by his mother, ██████████. Appearing as a witness for the Appellant was ██████████ Respite provider. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial dated October 5, 2015
- D-2 West Virginia Medical Provider Manual §513.9.1
- D-3 West Virginia Medical Provider Manual §513.9.1.1.2
- D-4 West Virginia Medical Provider Manual §513.9.1.6
- D-5 West Virginia Medical Provider Manual §513.9.1.16.2
- D-6 Service Authorization Second Level Negotiation Request dated September 17, 2015

D-7 APS CareConnection Purchase Request Details Screen Print, Service Year October 2015-September 2016

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) A 2nd Level Negotiation request (D-6) for 120 units of Behavior Support Professional (BSP) services, 2 units of Behavior Support Professional-IPP Planning (BSP-IPP) services, 2,000 units of Facility Based Day Habilitation (Day-Hab) services and 50 units of Transportation-Trips under the I/DD Waiver program was submitted on behalf of the Appellant on September 17, 2015.
- 2) The Department issued a Notice of Denial (D-1) on October 5, 2015, advising that none of the requested services had been approved.
- 3) The Appellant's individualized budget (D-7) for service year October 2015-September 2016 is \$70,163.47. The approval of the requested units of BSP, BSP-IPP, Day-Hab and Transportation services would cause the Appellant to exceed his individualized budget amount by \$12,819.05.
- 4) The Appellant's budget was increased by \$3,546.64 from the previous service year.
- 5) The Appellant's representative and witness argued that the Appellant should receive the same amount Day-Hab or Transportation services that he received in the previous year.

APPLICABLE POLICY

West Virginia Medicaid Provider Manual §§513.9.1, 513.9.1.1.2, 513.9.1.6 and 513.9.1.16.2 states that the amount of Behavior Support Professional, Behavior Support Professional-IPP Planning, Facility Based Day Habilitation and Transportation-Trips services are limited by the member's individualized budget. The budget allocation may be adjusted only if changes have occurred regarding the member's assessed needs.

DISCUSSION

The Appellant's Respite provider, [REDACTED], contended that the Appellant will experience a decline in the progress he has made regarding his maladaptive behaviors and integration within the community if he is unable to attend Day-Hab. Ms. [REDACTED] testified that any change in the Appellant's routine will cause setbacks with the improvements that he has made in the last year.

The Department's witness testified that more than half of the Appellant's budget is allocated to reimburse the Appellant's family for the care that they provide on his behalf. The Appellant resides in a natural setting and therefore, natural support from the family is expected. The Department advised that a portion of the Appellant's budget may be reallocated to pay for the Day-Hab and Transportation services, if those services are deemed to best meet the Appellant's needs.

CONCLUSIONS OF LAW

The services under the I/DD Waiver program are limited to the individualized budget that is determined yearly by the member's functional assessment. The approval of the total amount of Behavior Support Professional, Behavior Support-IPP Planning, Facility Based Day Habilitation and Transportation-Trips units for the Appellant would cause him to exceed his allocated budget amount, and therefore none of the services could be approved.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny the requested amount of Behavior Support Professional, Behavior Support-IPP Planning, Facility Based Day Habilitation and Transportation-Trips units for the Appellant under the I/DD Waiver program.

ENTERED this 18th day of February 2016

**Kristi Logan
State Hearing Officer**