



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

February 18, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3713

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: 15-BOR-3713

**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 11, 2016, on an appeal filed December 22, 2015.

The matter before the Hearing Officer arises from the December 9, 2015 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, APS Healthcare. Appearing as a witness for the Respondent was Pat Nisbet, Program Director, Bureau for Medical Services. The Appellant appeared pro se. Appearing as witnesses for the Appellant were ██████████, Service Coordinator, ██████████; ██████████, Family-Based Care Specialist, Center for Excellence in Disabilities; and ██████████, private Specified Family Care Provider.

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

Department's Exhibits:

- D-1 Notice of Denial dated December 9, 2015
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.9.1.6
- D-3 Service Authorization 2nd Level Negotiation Request dated November 4, 2015
- D-4 APS CareConnection Purchase Request Details

Appellant's Exhibits:

- A-1 DD-3 Psychological Evaluation dated October 16, 2008
- A-2 Social History Update dated October 5, 2007, and Social History Initial dated October 5, 2007
- A-3 TC Assessment dated October 6, 2015
- A-4 Waiver Participant Interview dated August 25, 2009
- A-5 APS Care Connection reports

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 December 9, 2015, the Appellant was notified (D-1) that her request for services under the I/DD Waiver Medicaid Program was denied. The notice indicates that the Appellant requested 1,040 units of Facility-Based Day Habilitation 1:1-2 units and was approved for 520 units; 6,718 units of Facility-Based Day Habilitation 1:3-4 units and was approved for 1,455 units; and 1,050 units of Facility-Based Day Habilitation 1:5-6 units and was approved for 527 units.
- 2) [REDACTED], Registration Coordinator with APS Healthcare, represented the Department and testified that the Appellant's annual I/DD Waiver Program budget for the budget year of November 1, 2015 through October 31, 2016 is \$65,389.72 (see Exhibit D-4). Mr. [REDACTED] stated that the Appellant would have exceeded her annual budget had all of the requested services been authorized. Pat Nisbet, Program Director with the Bureau for Medical Services, testified that the Appellant's annual budget actually increased by about \$8,000 from the previous year, and stated that the requested Day Habilitation services could be approved if the Appellant agreed to cuts in respite services. She indicated that Waiver recipients are no longer permitted to exceed their annual budgets due to monetary constraints.
- 3) [REDACTED], Specified Family Care Provider, testified that the Appellant has a history of suicide attempts, and attending Day Habilitation improves the Appellant's emotional health. In addition, she testified that the Appellant needs the respite services. [REDACTED], Family-Based Care Specialist with the Center for Excellence in Disabilities, testified that the respite services benefit the Appellant, as well as the care provider.

APPLICABLE POLICY

I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, Chapter 513.9.1.6, Facility-Based Day Habilitation: Traditional Option (D-2):

Facility-Based Day Habilitation is a structured program that uses meaningful and productive activities designed to promote the acquisition of skills or maintenance of skills for the member outside the residential home. The services must be provided by awake and alert staff and based on assessment, be person-centered/goal oriented, and be meaningful/productive activities that are guided by the member's strengths, needs, wishes, desires, and goals.

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. The amount of services is limited by the member's individualized budget. While representatives for the Appellant indicated that the Appellant has benefitted from Day Habilitation services, the Department's representatives testified that if all requested services had been authorized, the Appellant's annual budget would have been exceeded. 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 services 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 18th Day of February 2016.

**Pamela L. Hinzman
State Hearing Officer**