



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

June 15, 2017

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 16-BOR-2934

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services

[REDACTED], [REDACTED]

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

██████, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 16-BOR-2934

**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 ██████, A PROTECTED INDIVIDUAL. 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 appeal filed on October 28, 2016 was held in abeyance pending resolution of a U.S. District Court matter of which the Appellant was potentially a class member. However, the Appellant opted to go forward with the appeal before the Board of Review; therefore, a fair hearing was convened on June 13, 2017.

The matter before the Hearing Officer arises from the October 17, 2016 decision by the Respondent to deny Appellant's request for Medicaid Intellectual and Developmental Disabilities Waiver (IDDW) Program services that exceeded the individualized participant budget.

At the hearing, the Respondent appeared by ██████████ with KEPRO. Appearing as witness for the Respondent was Pat Nisbet, Bureau for Medical Services (BMS). Taniua Hardy with BMS was present but did not participate in the hearing. The Appellant appeared by her service coordinator with ██████████, ██████████, by the request of the Appellant's guardian, ██████████, who also appeared as witness on the Appellant's behalf. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial, dated October 17, 2016
- D-2 BMS Provider Manual, Chapter 513, IDDW, §513.17.2
- D-3 BMS Provider Manual, Chapter 513, IDDW, §513.8.1
- D-4 BMS Provider Manual, Chapter 513, IDDW, §513.25.2
- D-5 2nd Level Negotiation Request, dated September 9, 2016
- D-6 Requested Services for Service Year August 1, 2016 to July 31, 2017

- D-7 Custodian of Records Affidavit of Pat Nisbet, Director of the Home and Community-Base Services Department, Bureau for Medical Services
- D-8 Paid IDDW Services for August 1, 2015 to July 31, 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) The Appellant is an active participant in the IDDW Program. She receives services under the Traditional Service Option.
- 2) On September 9, 2016, the Appellant's service coordinator, [REDACTED], submitted a second-level request for additional units of Home-Based PCS (1:1). (Exhibit D-5)
- 3) The Respondent issued a Notice of Denial on October 17, 2016, advising the Appellant that the request for additional units was denied, approving 11,151 units of the 11,680 requested. (Exhibit D-1)
- 4) The appeal is based on a service year budget from August 1, 2016 to July 31, 2017 of \$59,823.72. (Exhibit D-6)
- 5) The requested amount of service units would exceed the service year budget by \$2,647.46.
- 6) The approved amount of service units was the maximum amount that could have been approved within the Appellant's individualized budget.
- 7) The Notice of denial stated that the Appellant's requested amount of service units could not be approved because the assessed annual budget would have been exceeded or had been exceeded without a showing that funds in excess of the budget were necessary to ensure the health and safety of the Appellant in the community. (Exhibit D-1)
- 8) The Appellant's requested 11,680 units of Home-Based PCS (1:1) equates to a request of one-on-one in-home supervision 8 hours a day, 7 days a week, for a total of 56 hours a week.
- 9) The approved 11,151 units of the Home-Based PCS (1:1) equates to approval of one-on-one in-home supervision of 7.63 hours per day, 7 days a week, for a total of 52.5 hours per week.
- 10) The previous year's paid services for the Appellant equaled \$45,641.83, which is \$14,181.89 less than the current year's approved amount of Home-Based PCS (1:1).
- 11) There is an alternative, less expensive, option that would meet the Appellant's needs which is available in the Participant-Directed Service Option.

APPLICABLE POLICY

BMS Provider Manual, §513.17.2, Home-Based Agency Person-Centered Support (Traditional Option), states, in part, that the amount of services is limited by the individualized budget of the person who receives services. If the person has a documented change in need after the annual functional assessment has been conducted, then a Critical Juncture IPP meeting must occur to discuss the need for additional services which may or may not be authorized.

The Interdisciplinary Team (IDT) must implement a person-centered plan within the person's individualized budget and make every effort to purchase IDDW services within the individualized budget. (BMS Provider Manual, §513.8.1)

There are two service options are offered to the IDDW, Traditional Service Option, and Participant-Directed Service Option as provided by the Personal Options Financial Management Service. A person who receives services may choose either service option at any time. All services accessed will be done so through an IDDW provider after being determined necessary, appropriate, and within the assessed budget. The IDDW provider has employer authority as well as fiscal responsibility for the services listed on the service plan of the person who receives services. These services are provided in natural settings where the person who receives services resides and participates in community activities. When a person who receives services accesses all services via the Traditional Service Option, the assessed budget is utilized to access services that can be purchased within the assessed budget. Once the team determines the array of services that may be purchased within the individualized budget, the Service Coordinator documents on the IPP (WV-BMS-IDD-5) and requests the units agreed upon in the UMC web portal. The hourly wage of agency staff employed by an IDDW provider is determined solely by the agency that employs the staff person. (BMS Provider Manual, §§513.9, 513.9.1)

In a Participant-Directed Service Option, the person who receives services has the opportunity to exercise choice and control over the participant-directed services he/she chooses and the individuals and organizations who provide them (employer authority), how the portion of the individualized budget associated with participant-directed services (i.e., their participant-directed budget) is spent. The person who receives services and/or his/her legal/non-legal representative chooses the types of services, the amount of services, and the wages of the member's employees within the parameters of the entire participant-directed budget. (BMS Provider Manual, §513.9.2)

BMS Provider Manual, §513.25.2, requires that the participant and/or his/her legal representative have the responsibility to understand that the IDDW is an optional program and that not all needs may be able to be met through the services available within this program and a person's annual individualized budget. Additionally, the participant and/or his/her legal representative must purchase services within his/her annual individualized budget or utilize natural or unpaid supports for services unable to be purchased.

DISCUSSION

The Appellant's annual budget for the service year of August 1, 2016 to July 31, 2017, was determined to be \$59,823.89. The Appellant's service coordinator requested a total of 11,680 units of Home-Based PCS (1:1) on September 9, 2016. Because the requested Home-Based PCS (1:1) services would exceed the Appellant's annual budget by \$2,647.46, the Respondent approved 11,151 of those requested service units, which was within the Appellant's individualized budget. Additionally, the Respondent determined that the submitted 2nd level request failed to show that the Appellant's health and safety in the community were at risk if her budget was not exceeded.

The Appellant's representative and service coordinator, [REDACTED], maintained that the Appellant needed 24 hours, 7 days a week supervision, which requires the requested service units of 11,680. Ms. [REDACTED] testified that the Appellant's mother works two jobs, thus requiring the additional service units. Witness for the Respondent, Pat Nisbet, testified that under the Participant-Directed Service Option, the Appellant's request could be fulfilled, if she chose to move from the Traditional Options, which is a more expensive program. Ms. [REDACTED] stated that because the Participant-Directed Service Option paid the providers less, it would be difficult to retain the Appellant's current provider.

The evidence and testimony presented did not show that the Appellant's health and safety in the community were at risk if her budget was not exceeded. The Appellant's approved service units of 11,151 Home-Based PCS (1:1) offers the Appellant 7.63 hours of services per day, 7 days a week, for a total of 52.5 hours a week. The testimony from the Appellant's mother showed there are other family supports that can be utilized to supplement those 37 minutes a day that would not be met by not approving the requested total of 8 hours of services per day, 7 days a week for a total of 56 hours a week. Additionally, the Appellant has the option to switch to the Participant-Directed Service Option and receive those additional services within her individualized budget.

CONCLUSIONS OF LAW

- 1) The requested additional Home-Based PCS (1:1) service units would exceed the Appellant's annual budget for the budget year August 1, 2016 to July 31, 2017.
- 2) The Appellant has natural family supports available.
- 3) The Appellant has the option to switch to the Participant-Directed Service Option and receive those additional services within her individualized budget.
- 4) The Appellant's health and safety in the community would not be at risk by not approving the additional requested services units.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's action to deny the Appellant's request for prior authorization Home-Based PCS (1:1) service units in excess of the Appellant's individualized budget.

ENTERED this 15th day of June 2017.

Lori Woodward, State Hearing Officer