



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 West Washington Street
Charleston, WV 25313
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Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

January 31, 2017

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR
ACTION NO.: 16-BOR-3165

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, WV Bureau for Medical Services

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

■■■■, A JUVENILE,

Appellant,

v.

Action Number: 16-BOR-3165

**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 JUVENILE. 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 January 31, 2017, on an appeal filed December 13, 2016.

The matter before the Hearing Officer arises from the October 17, 2016, decision by the Respondent to deny additional units of Out-of-Home Respite in the Title XIX Intellectual/Developmental Disabilities (I/DD) Waiver Services Program.

At the hearing, the Respondent appeared by ■■■■■ of KEPRO. Appearing as a witness for the Department was Taniua Hardy, Bureau for Medical Services (BMS). The Appellant was represented by his grandmother, ■■■■■. Appearing as a witness for the Appellant was ■■■■ ■■■■, respite worker with ■■■■. 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 Bureau for Medical Services Provider Manual §513.18.2.1
- D-3 Bureau for Medical Services Provider Manual §513.28
- D-4 Bureau for Medical Services Provider Manual §513.25.2
- D-5 APS Healthcare 2nd Level Negotiation Request, dated October 11, 2016
- D-6 Purchase Request Details computer screen print, dated August 22, 2016
- D-7 Individualized Program Plan (IPP), dated August 22, 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 an active member of the Medicaid I/DD Waiver Program.
- 2) The Appellant's Individualized Program Plan (IPP) service year is September 1, 2016 – August 31, 2017. (D-7)
- 3) On October 11, 2016, a 2nd Level Negotiation Request was signed by Service Coordinator, [REDACTED], requesting an increase from 3,650 units to 4,160 units of Out-of-Home Respite for the Appellant. (D-5)
- 4) On October 17, 2016, the Department issued a Notice of Denial for additional units of Out-of-Home Respite, because the request exceeded the annual service limit. (D-1)
- 5) The maximum annual units of Out-of-Home Respite may not exceed 3,650 units which is based upon an average of two and a half (2.5) hours per day. (D-2)
- 6) The Appellant was approved for the maximum amount of Out-of-Home Respite. (D-1)

APPLICABLE POLICY

West Virginia Bureau for Medical Services Provider Manual Chapter 513, §513.18.2.1 reads as follows, in pertinent part, regarding Out-of-Home Respite:

Out-of-Home Respite

Out-of-Home Respite services are provided out of the home where the individual resides and are provided by awake and alert Direct Support Professionals specifically designed to provide temporary substitute care normally provided by a family member or a Specialized Family Care Provider. Not all forms of respite are paid services. Anytime the primary caregiver can get a break from providing care, this is a form of respite. The services are to be used for relief of the primary caregiver to help prevent the breakdown of the primary caregiver due to the physical burden and emotional stress of providing continuous support and care to the dependent person who receives services.

Limitations/Caps:

- The amount of service is limited by the individualized budget of the person who receives services.
- The maximum annual units of Out-of-Home Respite services may not exceed 3,650 units/912 hours (based upon an average of 2.5 hours per day).
- The amount of Out-of-Home Respite must be identified on the IPP.

Bureau for Medical Services Provider Manual §513.25.2 explains that the person and/or their legal representative have the responsibility to understand this 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.

DISCUSSION

The Department denied the Appellant's request to increase the maximum annual units of Out-of-Home Respite services from 3,650 to 4,160. The Appellant's representative, [REDACTED], requested a hearing because she feels the Appellant requires more than the approved amount of Out-of-Home Respite.

The West Virginia Bureau for Medical Services Provider Manual indicates that the maximum annual units of Out-of-Home Respite services may not exceed 3,650 units or 912 hours. This averages to two and a half hours per day. The Appellant was approved for the maximum amount of units allowed by policy.

Ms. [REDACTED] testified that the limit of 3,650 units is not sufficient to provide the relief the services are intended give. She stated the purpose of the Out-of-Home Respite services is to give her a break from the physical and emotional stress of caring for the Appellant, but with only two and a half (2.5) hours per day, that barely gives her the time to go to the grocery store and run the errands required to provide for the Appellant. Ms. [REDACTED] stated that if the Department would allow an additional ten (10) hours of Out-of-Home Respite per month that would help a great deal.

Respondent's witness, Taniua Hardy, testified that the Out-of-Home Respite services is an optional program and reiterated that not all needs may be able to be met through this service. She stated that if Ms. [REDACTED] was having a hard time and required additional hours, there was another option available to her. She stated the Appellant was also approved for 7,320 units (average of five hours per day) of Family Person-Centered Support (PCS). Ms. Hardy stated Ms. [REDACTED] could use fewer Family PCS hours and bill to a different service called Home Base PCS, and have an individual come into the home to care for the Appellant. This would allow Ms. [REDACTED] the additional time that she requires to complete other tasks or to take a break. Unfortunately, reducing Family PCS units would also reduce money received by Ms. [REDACTED] for the Appellant. Ms. [REDACTED] stated that the money received from billing for Family PCS is required to pay bills and provide for the Appellant.

The maximum annual units of Out-of-Home Respite allowed by policy are 3,650. The Appellant was approved for the maximum amount. The Department was correct in its decision to deny the Appellant's request to increase Out-of-Home Respite units to 4,160.

CONCLUSION OF LAW

The evidence submitted at the hearing affirms the Department's decision to deny the Appellant's request to exceed the maximum limit of 3,650 units of Out-of-Home Respite as set forth by policy at the time of the Appellant's annual assessment

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Appellant's request to increase Out-of-Home Respite units from 3,650 to 4,160, as this is above the maximum limit set in place by policy.

ENTERED this 31st day of January 2017

Natasha Jemerison
State Hearing Officer