



June 14, 2024

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WV DoHS/BMS
ACTION NO.: 24-BOR-2044

Dear [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 HUMAN SERVICES. These same laws and regulations are used in all cases to ensure 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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Stacy Broce, Bureau for Medical Services
Janice Brown, Acentra

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 24-BOR-2044

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR MEDICAL SERVICES,**

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on May 15, 2024.

The matter before the Hearing Officer arises from the Respondent's January 3, 2024 decision to terminate the Appellant's eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver program.

At the hearing, the Respondent appeared by Stacy Broce, Bureau for Medical Services. Appearing as a witness for the Respondent was Ryan Greenlee, Acentra. The Appellant was represented by ■ the Appellant's mother. All witnesses were placed under oath and the following exhibits were entered into the record.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual Excerpts
- D-2 West Virginia I/DD Waiver Request to Continue Services, submitted November 3, 2023
- D-3 Notice, dated January 3, 2024
- D-4 Notice and Envelope, received February 1, 2024
- D-5 Notice, dated February 8, 2024
- D-6 Notice and Envelope, mail fee dated February 8, 2024

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) On November 3, 2023, [REDACTED], of [REDACTED], completed a WV I/DD Waiver Request to Continue Services on behalf of the Appellant (Exhibit D-1).
- 2) The request was marked “Eligibility Extension Request: Complete when there is or will be no direct care services provided during a full calendar month” (Exhibit D-1).
- 3) The request indicated the Appellant had last received direct care services on June 1, 2023 (Exhibit D-1).
- 4) The reason for the request was that the Appellant’s mother had not billed direct care services since June 1, 2023 (Exhibit D-1).
- 5) The request was approved through December 31, 2023 (Exhibit D-1).
- 6) The approval noted that the discharge process would begin if the Appellant did not access services by December 31, 2023 (Exhibit D-1).
- 7) On January 3, 2024, the Respondent issued a certified written notice to the Appellant’s representative at [REDACTED] (Exhibit D-3).
- 8) The January 3, 2024 notice advised that the Appellant was required to access at least one service by February 2, 2024, or he may be discharged from the I/DD Waiver program (Exhibit D-3).
- 9) The January 3, 2024 notice instructed that the Appellant’s representative must contact the case management agency immediately upon receipt of the letter to discuss options to access I/DD Waiver program services (Exhibit D-3).
- 10) The January 3, 2024 notice was sent certified and was returned as *unclaimed, unable to forward* (Exhibit D-4).
- 11) On February 8, 2024, the Respondent issued a written notice to the Appellant’s representative at [REDACTED] (Exhibit D-5).
- 12) The February 8, 2024 notice advised the Appellant would be discharged from the Medicaid I/DD Waiver program on March 7, 2024, because he did not access direct care services within 180 days (Exhibit D-5).

- 13) The February 8, 2024 notice was sent certified and was returned as *unclaimed, unable to forward* (Exhibit D-6).
- 14) The Appellant's [REDACTED] address was not provided to the Respondent until February 16, 2024.
- 15) After February 2, 2024, the Appellant's representative submitted retroactive I/DD Waiver service billing (Exhibit D-6).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 513.25.2 Responsibilities provides that the member and their legal representative have responsibilities that include purchasing services within their individualized budget, complying with all I/DD Waiver policies including monthly home visits by the case manager, and notifying their case manager immediately if the member's living arrangements have changed, the member's needs change, the member is hospitalized, or if the member needs to have a critical juncture meeting. Failure to comply with these responsibilities may jeopardize the member's continuation of I/DD Waiver services.

BMS Manual § 513.26 Discharge provides that if a member does not access or utilize at least one I/DD Waiver service each month (except case management), the member may be discharged from the I/DD Waiver program.

DISCUSSION

The Respondent terminated the Appellant's Medicaid I/DD Waiver program services because the Appellant failed to access or utilize at least one I/DD Waiver program service each month. The Appellant argued that she did not receive the notices and that she did submit billing retroactively but was not paid. She testified that she learned that services were terminated when she called to align services in [REDACTED]

The policy provides that a member who fails to access or utilize at least one I/DD Waiver service each month may be terminated from the Medicaid I/DD Waiver program. The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that the Appellant was not utilizing Medicaid I/DD Waiver program services monthly and that notices were properly issued to the Appellant's representative.

The preponderance of evidence revealed that as of the November 3, 2024 request to continue I/DD Waiver services, the Appellant had not accessed direct care services since June 1, 2023, as evidenced by no direct care services being billed since June 1, 2023. The Appellant's request to continue I/DD Waiver services was granted through December 31, 2023.

The Respondent's representative argued that the Appellant did not access I/DD Waiver services by December 31, 2023, so a notice was issued on January 3, 2024, advising the Appellant's

representative that she must access one of the services listed by February 2, 2024 or the Appellant may be discharged from the I/DD Waiver program. The evidence revealed that the notice was returned as unclaimed/undeliverable after multiple attempts to deliver the notice to the Appellant's address of record.

The Respondent's representative testified that at some point in June 2023, the Appellant moved to [REDACTED], out of the Appellant's service provider's catchment area. The Appellant testified that she has been staying with her mother in [REDACTED]. The Appellant's representative testified that she has been paying her house payment but hasn't been staying in her home because it was unsafe due to vandalism and a broken water line. The Appellant's representative testified that she periodically goes between her residences and continues to receive mail at her address of record. The Appellant's representative testified that she was not on her mother's lease in [REDACTED] and could not receive mail there until she was added. The submitted evidence did not indicate that the Appellant's representative had arranged to obtain her mail or forward her mail through the postal service.

The Respondent's representative testified that on February 16, 2024, the Respondent was notified of the Appellant's [REDACTED] address by emails from the Appellant's service provider, not the Appellant's representative. The Appellant argued that she called Acentra and notified the Respondent of the [REDACTED] address when she "got this process started." The submitted evidence did not establish that the Appellant's representative notified the Respondent of an address change before the issuance of the January and February 2023 notices.

To ensure continuity of services, the Appellant's representative was required to notify the Respondent she was receiving mail at a different location. The preponderance of evidence revealed that on January 3, 2024, the Respondent issued an advanced notice of the Appellant's requirement to access I/DD Waiver services by February 2, 2024. The evidence revealed that on February 8, 2024, the Respondent issued an advanced notice of the Appellant's termination from the I/DD Waiver program. The preponderance of evidence revealed that the certified notices were mailed to the Appellant's address of record and returned unclaimed.

The Respondent testified that in February 2024, the Appellant's representative submitted retroactive billing for previous services she rendered to the Appellant. The Appellant's representative's testimony affirmed that she submitted "back billing" in February 2024. The Appellant's representative testified that she provides services to the Appellant but is not being paid. She testified that was not being paid for the services she provided. The Respondent argued that when the member resides with a natural parent, providing services for the program is connected to billing for the services provided. The Respondent's representative testified that to be considered as accessing the I/DD Waiver services, the services must be accessed and paid for by the I/DD Waiver program. No evidence was submitted to establish that the Appellant accessed services paid for by the I/DD Waiver program.

While the Appellant's representative argued that she provided services despite not billing, the evidence revealed that she did not attempt to submit retroactive billing until after February 2, 2024. The submitted evidence established that the Appellant did not access I/DD Waiver services between June 2023 and February 2, 2024.

CONCLUSIONS OF LAW

- 1) The Respondent may terminate a recipient's Medicaid I/DD Waiver program benefits when the member fails to access or utilize at least one I/DD Waiver service each month.
- 2) The preponderance of evidence established that the Respondent's January and February 2024 notices were mailed to the Appellant's address of record.
- 3) The preponderance of evidence revealed that the Appellant did not access or utilize any I/DD Waiver program services between June 2023 and February 2024.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's Medicaid I/DD Waiver program eligibility because he failed to access or utilize at least one Medicaid I/DD Waiver program service each month.

ENTERED this 14th day of June 2024.

Tara B. Thompson, MLS
State Hearing Officer