



March 26, 2025

REMOVED

RE: **REMOVED** A PROTECTED INDIVIDUAL v. WVDohS-BMS
ACTION NO.: 25-BOR-1404

Dear **REMOVED**

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 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: BMS/PC&A/Acentra

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

REMOVED A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 25-BOR-1404

**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 **REMOVED** 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 March 20, 2025, on an appeal filed February 14, 2025.

The matter before the Hearing Officer arises from the January 30, 2025 decision by the Respondent to deny the Appellant's application for benefits and services under the Intellectual/Developmental Disabilities Waiver Program. (I/DD)

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau of Medical Services. The Appellant was represented by her parents **REMOVED**. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-2 Notice of Decision dated January 30, 2025
- D-3 Independent Psychological Evaluation dated January 15, 2025
- D-4 **REMOVED** County Schools Educational Evaluation Report dated November 2, 1997
- D-5 **REMOVED** County Schools Educational Evaluation Report dated November 21, 1994
- D-6 Psychological Report dated April 29, 1992
- D-7 Compuscore for the WJ-R dated October 27, 1997
- D-8 **REMOVED** County Schools Teacher Evaluation Report dated May 29, 1998
- D-9 **REMOVED** County Schools Parent Information Transition Worksheet dated September 3, 1997
- D-10 **REMOVED** County Schools Teacher Evaluation Report dated May 1, 1997
- D-11 **REMOVED** County Schools Parent Information Transition Worksheet dated April 24, 1997
- D-12 **REMOVED** County Schools Teacher Evaluation Report dated November 4, 1997

- D-13 **REMOVED** County Schools Teacher Evaluation Report dated March 27, 1996
D-14 Compuscore for the WJ-R dated November 22, 1994
D-15 **REMOVED** County Schools Health/Speech Language Screening dated August 8, 1994
D-16 **REMOVED** County Schools Parent Information Report dated November 1, 1994
D-17 **REMOVED** County Schools School Based Assistance Team Intervention Report dated August 18, 1994
D-18 **REMOVED** County Schools Psychological Report dated November 30, 1997
D-19 **REMOVED** County Schools Psychological Report dated December 8, 1997
D-20 **REMOVED** County Schools Individual Education Plan dated January 7, 2000
D-21 **REMOVED** County Schools Individual Education Plan dated May 26, 1999
D-22 **REMOVED** County Schools Individual Education Plan dated November 3, 1997
D-23 **REMOVED** County Schools Individual Education Plan dated May 29, 1998
D-24 **REMOVED** County Schools Individual Education Plan dated May 1, 1997

*D-1 was not omitted in an evidence packet but is considered stipulated policy Bureau for Medical Services Provider Manual §§513.6 - 513.6.3

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 45 years of age.
- 2) The Appellant, through her parents, applied for benefits and services through the Respondent's Intellectual and Developmental Disabilities Waiver (IDD) program.
- 3) On January 15, 2025, an Independent Psychological Evaluation (IPE)(Exhibit D-3), a requirement of the application process was completed with the Appellant and her mother.
- 4) The Appellant presented a diagnosis of Mild Intellectual Disability. (Exhibit D-3)
- 5) The Appellant's diagnosis met the diagnostic criteria for program eligibility.
- 6) The Appellant presented a substantial adaptive deficit in the area of learning.
- 7) To meet the functionality criteria for the program, an individual must present at least three substantial adaptive deficits in three or more of the six identified major life areas.
- 8) The Appellant failed to meet the functionality criteria for program eligibility.

- 9) On January 30, 2025, the Respondent issued a Notice of Decision (Exhibit D-2) informing the Appellant that her application had been denied because documentation did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following life areas: Self-Care, Language, Mobility, Self-Direction, and Capacity for Independent Living.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive I/DD Waiver Program Services, an applicant must meet the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for active treatment; and
- Requirement of ICF/IID Level of Care.

Diagnosis

The applicant must have a diagnosis of Intellectual Disability with concurrent substantial deficits manifested prior to age 22 or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

Examples of related conditions which, if severe and chronic in nature, may make an individual eligible for the I/DD Waiver Program include but are not limited to, the following:

- Autism;
- Traumatic brain injury;
- Cerebral Palsy;
- Spina Bifida; and
- Any condition, other than mental illness, found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires services similar to those required for persons with intellectual disability.

Additionally, the applicant who has a diagnosis of intellectual disability or a severe related condition with associated concurrent adaptive deficits must meet the following requirements:

- Likely to continue indefinitely; and,
- Must have the presence of at least three substantial deficits out of the six identified major life areas listed in Section 513.6.2.2.

Functionality

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,
- Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community, and leisure activities. At a minimum, three of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined as standardized scores of three standard deviations below the mean or less than one percentile when derived from a normative sample that represents the general population of the United States, or the average range or equal to or below the 75th percentile when derived from Intellectual Disability (ID) normative populations when ID has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

Active Treatment

Documentation must support the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

DISCUSSION

Policy requires that an applicant for IDD Waiver program services must have written documentation that they meet eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of the IPE report completed by a member of the Independent Psychological network. The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the MECA to determine applicant eligibility for the IDD Waiver Program. The MECA determines if the information provided aligns with the policy criteria for establishing Medicaid IDD Waiver eligibility. The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding about the Appellant's IDD Waiver eligibility.

To be determined eligible for the IDD Waiver program, an individual must meet the medical

eligibility criteria of a diagnosis, functionality, the need for active treatment and the requirement of ICF/IID level of care. Eligibility is established for functionality criteria when an individual presents three or more substantial deficits in the six identified major life areas of self-care, language, learning, mobility, self-direction and capacity for independent living. Based on the information and evaluations submitted for review, the Appellant presented a substantial deficit in the area of learning, but failed to present three or more substantial deficits; therefore, she did not meet the functionality criteria. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet functionality eligibility standards.

Governing policy reveals that substantial deficits are defined as standardized scores of three standard deviations below the mean or less than one percentile when derived from a normative sample that represents the general population of the United States, or the average range or equal to or below the 75th percentile when derived from ID normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review.

On January 15, 2025, the Appellant and her mother completed an IPE with Sunshine Solutions and **REMOVED** Licensed Psychologist. As part of the IPE, the Appellant was administered a Weschler Adult Intelligence Scale which yielded a full-scale Intellectual Quotient (IQ) of 55 which was classified as “Extremely Low”. Kerri Linton, consulting psychologist for the Bureau of Medical Services, testified that the Appellant achieved an eligible score to render a diagnosis of an intellectual disability; therefore, the Appellant met the diagnostic criteria for program eligibility. Additionally, Ms. Linton testified that the Appellant’s achieved scores on the Wide Range Achievement Test resulted in the Respondent awarding a substantial deficit in the area of functional academics or learning.

To measure the Appellant’s functionality for program eligibility purposes, the Appellant was administered an Adaptive Behavior Assessment System (ABAS). Ms. Linton testified that three deviations below the mean are determined to be scaled scores of one or two for program eligibility purposes. The Appellant achieved a scaled score of two in the area of communication; however, Ms. Linton testified that the score was not supported by the narrative descriptions outlined in the IPE which document “[Appellant] is able to speak in complete sentences. [Appellant] is able to ask and answer simple questions. [Appellant] is able to initiate a conversation but may have difficulty maintaining a conversation.” Therefore, the Appellant was not awarded a substantial deficit in the area of communication. The Appellant achieved a scaled score of one in the area of functional academics which resulted in a substantial deficit in the area of learning. The Appellant achieved scores of self-care-6, self-directions-4 and the subcomponents of Capacity for Independent Living of leisure-4, social-7, home living—5, health and safety-5. The Appellant achieved a score of community use-1, but did not meet a total of eligible scores in three areas of Capacity for Independent Living; therefore, a substantial deficit was not awarded in that area.

The Appellant’s representatives contend that additional substantial deficits should have been

awarded in the area of self-direction and capacity for independent living.

Self-Direction-The Appellant's representatives testified that the Appellant requires prompting with medications. Without prompting, the Appellant would not administer her own medications.

Capacity for Independent Living-The Appellant's representatives contend that the Appellant is unable to live independently and requires assistance with money management. In the event of an emergency, the Appellant's representatives believe that the Appellant would be unable to seek assistance. The Appellant's representatives indicated that the Appellant previously attempted to live on her own but was unable to maintain a household.

The Hearing Officer can only decide whether the Respondent correctly denied the Appellant's eligibility based on the measure of his adaptive behavior as indicated on the IPE and corroborated by the submitted information. The submitted documentation failed to demonstrate the presence of substantial deficits in three or more of the identified major life areas. Because the functionality criteria was not established, the Respondent's decision to deny the Appellant's eligibility for the I/DD Waiver program is affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.
- 2) The Appellant met the diagnostic criteria with a presented diagnosis of Mild Intellectual Disability and an IQ score of 55 on administered diagnostic tests.
- 3) As a result of the January 2025, IPE one substantial deficit was awarded in the area of learning.
- 4) No additional substantial deficits were awarded to establish functionality criteria.
- 5) The Appellant failed to meet the functionality criteria; therefore, medical eligibility for the I/DD Waiver program could not be established.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's application for services under the IDD Waiver program.

ENTERED this _____ day of March 2025.

Eric L. Phillips
State Hearing Officer