



May 13, 2025

REMOVED

RE: **REMOVED** v. WV DoHS/BMS
ACTION NO.: 25-BOR-1747

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 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: Kerri Linton, Psychological Consultation & Assessment
Stacy Broce, Bureau for Medical Services
Janice Brown, Acentra

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

REMOVED

Appellant,

v.

Action Number: 25-BOR-1747

**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**. 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 April 30, 2025.

The matter before the Hearing Officer arises from the Respondent's March 6, 2025 decision to deny the Appellant's medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent was represented by Kerri Linton, Psychological Consultation & Assessment (PC&A). Observing on behalf of the Respondent was Crystal Dotson, PC&A. The Appellant appeared and was represented by **REMOVED** his father. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Manual Chapter 513 excerpts
- D-2 Notice, dated March 6, 2025
- D-3 Independent Psychological Evaluation (IPE), dated January 10, 2025
- D-4 IPE, dated August 15, 2024
- D-5 Notice, dated September 11, 2024
- D-6 IPE, dated May 16, 2024
- D-7 Notice, dated June 11, 2024
- D-8 IPE, dated March 23, 2024
- D-9 Notice, dated March 28, 2024
- D-10 I/DD Intake & Assessment, dated February 9, 2022
- D-11 IPE, dated June 27, 2023
- D-12 Notice, dated July 10, 2023

- D-13 Notice, dated May 15, 2023
- D-14 IPE, dated May 4, 2023
- D-15 Appellant Resume

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) On March 6, 2025, the Respondent issued a notice advising the Appellant his application for Medicaid I/DD Waiver Program eligibility was denied because the submitted documentation did not indicate an eligible diagnosis, "of either Intellectual Disability or a Related Condition which is severe either at present or during the developmental period (prior to the age of 22)" (Exhibit D-2).
- 2) The Respondent's March 6, 2025 decision was based on the review of "1/10/25 Second Medical IPE; 8/15/24 IPE; 9/11/24 Notice of Denial; 5/16/24 Second Medical IPE; 6/11/24 Notice of Denial; 3/6/24 IPE; 3/28/24 Notice of Denial; 2/9/22 Endorsement of Determination of Intellectual & Developmental Disability; 6/27/23 IPE (Second Medical); 7/10/23 Notice of Denial; 5/15/23 Notice of Denial; 5/4/23 IPE; **REMOVED** Resume" (Exhibit D-2).
- 3) On January 10, 2025, Licensed Psychologist Cynthia Spaulding (hereafter Ms. Spaulding) completed an Independent Psychological Evaluation (IPE) with the Appellant (Exhibit D-3).
- 4) The Appellant was 37 years old at the time of the January 10, 2025 IPE (Exhibit D-3).
- 5) The Appellant's father, **REMOVED** (hereafter, **REMOVED**) provided information to Ms. Spaulding during the IPE (Exhibit D-3).
- 6) Ms. Spaulding considered the diagnostic and testing results of the Appellant's August 15, 2024 IPE (Exhibit D-3).
- 7) Ms. Spaulding administered a partial Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-4) because the full WAIS-4 was administered to the Appellant in March 2024.
- 8) Ms. Spaulding considered the results of the March 2024 WAIS-4, August 2024 Weschler Abbreviated Scale of Intelligence, and August 2024 Wide Range Achievement Test-Fifth Edition (WRAT-5) (Exhibit D-3).

- 9) Ms. Spaulding administered a Gilliam Autism Rating Scale-Third Edition (GARS-3) (Exhibit D-3).
- 10) Ms. Spaulding diagnosed the Appellant with Autism Spectrum Disorder, Level 2 (Exhibit D-3).
- 11) On August 15, 2024, Licensed Psychologist **REMOVED** completed an IPE with the Appellant and diagnosed the Appellant with Autism Spectrum Disorder, Level 1 (Exhibit D-4).
- 12) On May 16, 2024, Licensed Psychologist **REMOVED** completed an IPE and diagnosed the Appellant with Autism Spectrum Disorder, Level 2 (Exhibit D-6).
- 13) On March 23, 2024, Counseling Psychologist **REMOVED** completed an IPE with the Appellant and diagnosed him with Autism Spectrum Disorder, Level 2 (Exhibit D-8).
- 14) On June 27, 2023, Licensed Psychologist **REMOVED** completed an IPE with the Appellant and diagnosed him with Autism Spectrum Disorder, Level 1 (Exhibit D-11).
- 15) On May 4, 2023, **REMOVED** completed an IPE with the Appellant and diagnosed him with Autism Spectrum Disorder, Level 1 (Exhibit D-14).
- 16) On February 9, 2022, **REMOVED** completed an Endorsement of Determination of Intellectual & Developmental Disability with the Appellant and diagnosed the Appellant with Autism Spectrum Disorder (Exhibit D-10).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 400.5.2 *Intellectual and Developmental Disabilities Waiver* provides that the I/DD Waiver program is West Virginia's Home and Community Based Services program for individuals with intellectual and/or developmental disabilities that are at least three years of age. The I/DD Waiver program provides services based on a person's annual functional assessment.

BMS Manual § 513.6.1.1 *Initial Eligibility Determination Process* provides that the applicant is given with a list of Independent Psychologists (IP) in the Independent Psychologist Network (IPN) trained by the MECA who are available within the applicant's geographical area. The applicant chooses a psychologist in the IPN and contacts the IP to schedule the appointment within 14 days.

The IP is responsible for completing an Independent Psychological Evaluation (IPE) that includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is utilized by the MECA to make a medical eligibility determination.

Any applicant denied medical eligibility may re-apply to the Medicaid I/DD Waiver program at any time.

BMS Manual § 513.6.2 *Initial Medical Eligibility* provides:

To be medically eligible, the applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition

The MECA determines the qualification for an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has 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. For the [Medicaid I/DD Waiver] Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order to be eligible to receive [Medicaid 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

BMS Manual § 513.6.2.1 *Diagnosis* provides:

The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested before age 22 or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

Examples of related conditions that may, if severe and chronic in nature, make an individual eligible for the IDDW 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 disabilities 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 disabilities.

Additionally, the applicant who has a diagnosis of intellectual disability or a severe related condition with associated concurrent adaptive deficits must also 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 under Section 513.6.2.2 *Functionality*.

Code of Federal Regulations 42 CFR § 440.150(a)(2) Intermediate Care Facility (ICF/IID) services provides that *ICF/IID services* means health or rehabilitative services furnished to persons with Intellectual Disability or persons with related conditions in an intermediate care facility for individuals with Intellectual Disabilities.

Code of Federal Regulations 42 CFR § 435.1010 Definitions relating to institutional status provides:

Active Treatment in intermediate care facilities for individuals with intellectual disabilities means treatment that meets the requirements specified in the standard concerning active treatment for intermediate care facilities for persons with Intellectual Disability under § 483.440(a) of this subchapter.

Persons with related conditions means individuals who have a severe, chronic disability that meets all of the following conditions:

(a) It is attributable to –

- (1) Cerebral palsy or epilepsy; or
- (2) Any other condition, other than mental illness, found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(b) It is manifested before the person reaches age 22.

(c) It is likely to continue indefinitely.

Code of Federal Regulations 42 CFR § 456.370(b) Medical, psychological, and social evaluations provides that a psychological evaluation, not older than three months, is required to establish eligibility for Medicaid ICF/IID admission or authorization of payment. The psychological evaluation is required to include a diagnosis; summary of present medical, social, and developmental findings; medical and social family history; mental and physical functional capacity; prognoses; types of services needed; an assessment of the Appellant's home, family, and community resources; and a recommendation for ICF admission.

Code of Federal Regulations 42 CFR § 456.372 Medicaid agency review of need for admission provides that the Medicaid agency or its designee must evaluate each applicant's need for admission by reviewing and assessing the evaluations required by § 456.370.

DISCUSSION

The Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation failed to establish the presence of an eligible diagnosis. During the hearing, the Appellant's representative disputed the denial and requested the Appellant be found eligible.

Psychological Consultation and Assessment (PC&A) is the Respondent's Medical Eligibility Contracted Agent (MECA). PC&A is responsible for determining applicants' eligibility for the Medicaid I/DD Waiver Program by reviewing the IPE report. The MECA does not have the authority to change the information submitted for review and can only determine if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility.

Clinical conclusions regarding the Appellant's diagnosis and severity cannot be made by the Hearing Officer. The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding the Appellant's Medicaid I/DD Waiver program eligibility, based on the diagnosis and condition severity results of the submitted IPE and corroborated by the submitted information.

To be eligible for the Medicaid I/DD Waiver Program, the Appellant must meet the medical eligibility criteria in each category, including diagnosis. According to the policy, the eligible condition must be severe, chronic, and manifested before age 22. The Respondent was required to base the Appellant's I/DD Waiver Program eligibility determination on an IPE that corroborates the Appellant's eligible diagnosis.

Under federal regulations, persons with related conditions are those with a severe, chronic disability attributable to a condition other than mental illness, found to be closely related to intellectual disability because the condition results in an impairment of general functioning like that of intellectually disabled persons, and requires treatment or services like those needed by these persons.

The policy provides that when severe and chronic, autism spectrum disorder may be an eligible related condition. To prove that the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver program, the preponderance of evidence had to demonstrate that the Appellant did not have a diagnosis of severe and chronic autism spectrum disorder manifested before age 22.

The policy requires the MECA to consider the current diagnostic criteria when reviewing submitted documentation for eligibility. During the hearing, the Respondent's representative testified that a diagnosis of Autism Spectrum Disorder, Level 3 met the severity criteria for I/DD Waiver Program eligibility. The submitted evidence revealed the current presence of Autism Spectrum Disorder, Level 2, which fails to meet the policy's severity criteria. The preponderance of the evidence failed to establish the presence of a diagnosis that constituted a severe and chronic disability with concurrent substantial deficits manifested during the Appellant's developmental period.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant must meet the medical eligibility criteria in each category: *Diagnosis, Functionality, Need for active treatment, and Requirement of an ICF/IID level of care.*
- 2) Autism Spectrum Disorder, Level 3, is an eligible chronic and severe related condition.
- 3) The evidence revealed the Appellant did not have a diagnosis of severe autism spectrum disorder.
- 4) The preponderance of evidence revealed that the submitted documentation did not establish the presence of an intellectual disability diagnosis or a related condition that constituted a severe and chronic disability with concurrent substantial deficits manifested before age 22.
- 5) Because the policy requires medical eligibility to be established in each category and the submitted evidence failed to establish the presence of a qualifying diagnosis, the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's medical eligibility for the Medicaid I/DD Waiver Program.

ENTERED this 13th day of May 2025.

Tara B. Thompson, MLS
State Hearing Officer