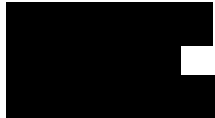




July 2, 2025



RE: [REDACTED] v. DoHS/BUREAU FOR MEDICAL SERVICES
ACTION NO.: 25-BOR-1844

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services
Acentra Health
PC&A

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

██████████,

Appellant,

v.

Action Number: 25-BOR-1844

**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 ██████████. 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 June 25, 2025.

The matter before the Hearing Officer arises from the March 26, 2025, decision by the Respondent to deny medical eligibility for services through the I/DD Waiver Program.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist for the Bureau for Medical Services. The Appellant appeared and was represented by her mother, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial dated March 26, 2025
- D-3 Independent Psychological Evaluation dated February 4, 2025
- D-4 ██████████ Report dated March 6, 2003
- D-5 Notes from Petition to Appoint Partial Guardian dated December 1, 2008
- D-6 Physical Therapy Progress Note dated March 5, 2009
- D-7 Psychological/Developmental Assessment dated September 23, 2013

Appellant's Exhibits:

- A-1 Petition for Appointment of Guardian dated January 25, 2019
- A-2 Psychological Evaluation Guardian Assessment dated November 16, 2018

- A-3 [REDACTED] of Employment dated January 11, 2019
- A-4 [REDACTED] Report dated January 18, 2019
- A-5 Social Security Administration Award Letters
- A-6 [REDACTED] Approval Notices dated June 25, 2015, and June 17, 2016
- A-7 Plan of Service dated July 17, 2013, and September 22, 2014
- A-8 Periodic Review/Status Report dated December 13, 2012
- A-9 Discharge Summary dated January 7, 2010
- A-10 [REDACTED] Report dated March 6, 2003
- A-11 Notes from Petition to Appoint Partial Guardian dated December 1, 2008
- A-12 Physical Therapy Progress Note dated March 5, 2009
- A-13 Screen Print of [REDACTED] – Dandy Walker Syndrome
- A-14 Psychological/Developmental Assessment dated September 23, 2013

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 applied for services through the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant in conjunction with the I/DD Waiver application on February 4, 2025 (Exhibit D-3).
- 3) The Appellant was 34 years old at the time of the February 2025 IPE (Exhibit D-3).
- 4) The Appellant was diagnosed with Other Specified Neurodevelopmental Disorder due to Dandy Walker Syndrome and mild Intellectual Disability (Exhibit D-3).
- 5) The Appellant was found to exhibit a substantial adaptive deficit in the area of *self-care* (Exhibits D-2 and D-3).
- 6) The Respondent sent a notice to the Appellant on March 26, 2025, advising that her application had been denied as the documentation submitted for review did not include sufficient documentation from the developmental period (prior to age 22) to confirm a potential eligible diagnosis of Intellectual Disability and the need for ICF level of care was not indicated. Additionally, the documentation failed to demonstrate at least three substantial adaptive deficits in the six major life areas (Exhibit D-2).

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 440.150(a)(2) *Intermediate Care Facility (ICF/IID) services* provided 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 in relevant sections:

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 § 456.70(b) *Medical, psychological, and social evaluations*:

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*:

The Medicaid agency or its designee must evaluate each applicant's need for admission by reviewing and assessing the evaluations required by § 456.370.

Bureau for Medical Services Provider Manual Chapter 513 explains medical eligibility for the I/DD Waiver program:

513.6.2 Initial Medical Eligibility

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. An ICF/IID provides monitoring, supervision, training, and supports. Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

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 IDDW 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 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.

513.6.2.1 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.

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.

513.6.2.3 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

Pursuant to policy and federal regulations, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active

treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Respondent denied the Appellant's application for the I/DD Waiver Program as the documentation failed to establish a diagnosis of an Intellectual Disability, or a severe related condition during the developmental period of prior to age 22. Additionally, the documentation supported the presence of only one substantial adaptive deficit.

Charley Bowen, witness for the Respondent, testified to the Appellant's IPE conducted in February 2025. The Appellant was administered the Weschler Adult Intelligence Scale (WAIS) and received a full-scale IQ score of 69. Mr. Bowen stated that an IQ score of 69 is a potentially eligible diagnosis of an Intellectual Disability, however, the Appellant was 34 years old in February 2025 and there was no evidence that the Appellant had been diagnosed with an Intellectual Disability prior to age 22. Previous testing of the Appellant's intellectual functioning submitted with the Appellant's application revealed the Appellant's IQ scores were 70 at age 18 and 70 when evaluated at age 23 (Exhibits D-5 and D-7). Mr. Bowen noted that an IQ score of 70 indicates borderline intellectual functioning and is not a diagnosis of an Intellectual Disability. Mr. Bowen testified that Dandy-Walker Syndrome is not eligible diagnosis without an accompanying diagnosis of Intellectual Disability that was presented during the developmental period.

The Appellant was administered the Adaptive Behavior Assessment Scale (ABAS) during the February 2025 IPE to determine her functioning regarding the major life areas. Mr. Bowen testified that scores of a 1 or 2 are three standard deviations below the mean, or average, of 10 and indicate that an individual is functioning below one percentile of the population. Mr. Bowen stated that the Appellant received a 1 in *self-care* and *functional academics*. The Appellant was administered the Wide Range Achievement Test (WRAT) to determine her achievement in learning. The Appellant received a 79 in reading, a 71 in spelling, and a 59 in arithmetic. Three standard deviations below the mean of 100 for the WRAT are scores of 55 and lower. Mr. Bowen stated that the Appellant completed the WRAT assessment and more weight was given to the WRAT when determining the Appellant's abilities in *functional academics* whereas the Appellant's mother completed the ABAS. Therefore, only self-care was awarded as a deficit.

██████████, the Appellant's mother, testified that the Appellant has been receiving Supplemental Security Income (SSI) since she was three years old. ██████████ argued that because the Appellant is considered disabled by the Social Security Administration, she should qualify for I/DD Waiver services. ██████████ questioned why the Appellant qualified for similar services in ██████████ and does not qualify for I/DD Waiver services in West Virginia.

██████████ testified that the Appellant has difficulty with her hands and is unable to button, zip or tie her clothing and surmised that the Appellant has peaked developmentally at age 34. ██████████ stated that the Appellant is unable to learn new skills and will only digress as she ages. ██████████ stated she is concerned about the Appellant's future without the support she provides. ██████████ stated any medical records for the Appellant during the developmental period have been purged and are unavailable.

The documentation provided failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or related condition, which is severe, that manifested during the developmental period of prior to age 22 and failed to establish the presence of at least three deficits out of the six major life areas. Whereas the Appellant did not meet the diagnostic or functionality criteria for the I/DD Waiver Program, the Respondent's decision to deny the Appellant's application is affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the diagnostic criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The documentation provided failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or related condition, which is severe, that manifested during the developmental period of prior to age 22.
- 3) The Appellant does not meet the diagnostic criteria for services under the I/DD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's application for services under the I/DD Waiver Program.

ENTERED this 2nd day of July 2025.

Kristi Logan
Certified State Hearing Officer