



July 24, 2025

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDOHS
ACTION NO.: 25-BOR-2286

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Angela Signore
Kerri Linton
Janice Brown
Cynthia Parsons

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

█████ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 25-BOR-2286

**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 July 24, 2025, upon a timely appeal filed on June 11, 2025.

The matter before the Hearing Officer arises from the April 9, 2025 decision by the Respondent to deny the Appellant's application for I/DD Waiver Services due to unfavorable medical eligibility findings.

At the hearing, the Respondent appeared by Kerri Linton. The Appellant was not present but was represented by her mother, █████. All witnesses were placed under oath and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|---|
| D-1 | BMS Provider Manual
Chapter 513 Intellectual and Developmental Disabilities Waiver (excerpt) |
| D-2 | Notice of decision, dated April 9, 2025 |

- D-3 Independent Psychological Evaluation (IPE)
Date of evaluation: March 31, 2025
- D-4 Interdisciplinary Diagnostic Assessment Report
Dates of evaluation: May 10, 2022, and May 17, 2022
- D-5 Functional Behavioral Assessment, dated January 24, 2024
- D-6 [REDACTED] County Schools Individualized Education Program (IEP), dated October 21, 2024
- D-7 Eligibility Committee Report, dated February 8, 2024
[REDACTED] County Schools
- D-8 Eligibility Determination Checklist, dated February 8, 2024
Autism Team Report
Speech or Language Impairment Team Report
Prior Written Notice of District's Proposal/Refusal
- D-9 Letter from [REDACTED], dated December 27, 2023
- D-10 Treatment Plan, ASC Therapies
Report date: December 18, 2024

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 applied for the Intellectual and Developmental Disabilities (I/DD) Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) Kerri Linton, a licensed psychologist employed by PC&A, reviewed the eligibility determination regarding the Appellant.

- 4) The Respondent issued a notice (Exhibit D-2), dated April 9, 2025, denying the Appellant's I/DD Waiver Program application.
- 5) This notice (Exhibit D-2) reads, in part, "Documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe. To be considered a severe Related Condition, Autism Spectrum Disorder must be diagnosed at Level 3."
- 6) This notice (Exhibit D-2) further provides, "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility..."
- 7) The notice (Exhibit D-2) further detailed that the Appellant established substantial limitations, or deficits, in two (2) of the major life areas referenced – *Learning*, and *Receptive or Expressive Language*.
- 8) An independent psychological evaluation (IPE) of the Appellant was conducted on March 31, 2025 (Exhibit D-3).
- 9) The Appellant was diagnosed (Exhibit D-3) with Autism Spectrum Disorder, with Accompanying Intellectual Impairment, Requiring Level 2 Support for Social Communication; and Level 2 Support for Restricted/Repetitive Behavior; and Unspecified Obsessive-Compulsive Disorder.
- 10) Of these diagnoses, Autism Spectrum Disorder is a potentially eligible diagnosis.
- 11) To be a related condition which is severe, Autism Spectrum Disorder must be diagnosed at Level 3.
- 12) The Appellant does not have an eligible diagnosis for the I/DD Waiver Program.
- 13) The Appellant was administered (Exhibit D-3) the Adaptive Behavior Assessment System – Third Edition (ABAS-3), a tool used to measure adaptive functioning.
- 14) The Appellant obtained ABAS-3 test scores indicating substantial limitations in the skill areas of *Communication*, *Functional Academics*, *Health and Safety*, and *Social*.
- 15) The ABAS-3 skill area of *Communication* corresponds with the policy-defined 'major life area' of *Receptive or expressive language (communication)*.
- 16) The ABAS-3 skill area of *Functional Academics* corresponds with the policy-defined 'major life area' of *Learning (functional academics)*.
- 17) The ABAS-3 skill areas of *Health and Safety* and *Social* correspond to two of the subdomains of the policy-defined 'major life area' of *Capacity for Independent Living*.

- 18) The Appellant was administered (Exhibit D-3) the Gilliam Autism Rating Scale – 3 (GARS-3), a tool used for Autism screening.
- 19) The Appellant obtained (Exhibit D-3) a GARS-3 Autism Index of 105, corresponding to a “very likely” probability of Autism Spectrum Disorder (ASD), and a severity level of three (3).
- 20) In the discussion section regarding the Appellant’s GARS-3 results, the evaluating psychologist noted (Exhibit D-3), “The above ratings appear to overestimate the severity of [Appellant’s] ASD symptoms.”
- 21) An interdisciplinary diagnostic assessment of the Appellant was completed, with evaluation dates of May 10, 2022, and May 17, 2022. (Exhibit D-4)
- 22) The Appellant was diagnosed with ASD on this May 2022 report (Exhibit D-4).
- 23) The report (Exhibit D-4) reads, in part, “...[Appellant] qualifies for a diagnosis of Autism Spectrum Disorder (299, F84) with language impairments. Obtaining an accurate estimation of her intellectual skills is challenging at this point due to her young age and significant ASD symptoms, and re-assessment of her intellectual skills in [sic] recommended in the future. Per DSM criteria, she will require very substantial support (level 3) for social-communication deficits and support for restricted, repetitive behaviors...”

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

The Appellant requested a hearing to appeal the Respondent's denial of her application for participation in the I/DD Waiver Program due to unfavorable medical eligibility findings. The Respondent must show, by a preponderance of the evidence, that it correctly denied the Appellant's application on this basis.

The Appellant was denied for I/DD based on two of the required components of medical eligibility: an eligible diagnosis and functionality. The policy for I/DD requires a diagnosis of intellectual disability or a qualifying related condition. Qualifying related conditions require, among other things, a severity threshold. For the potentially eligible diagnosis of ASD to meet the "severe and

“chronic disability” standard noted in policy, it must be diagnosed at Level 3. Functionality policy for I/DD requires the establishment of substantial limitations, or “deficits,” in at least three (3) of six (6) designated areas, by both narrative descriptions and approved quantitative measurements.

The Appellant’s ASD diagnosis is not at Level 3 and is therefore not an eligible related condition diagnosis. The Appellant is an 8-year-old child and was 7 years and 4 months old at the time of her most recent evaluation (Exhibit D-3) reveals an ASD diagnosis at Level 2. The psychologist noted that the Appellant’s GARS-3 (an Autism screening tool) results appeared to overestimate the severity of the Appellant’s ASD symptoms. The Appellant was diagnosed in May 2022 (Exhibit D-4) with ASD at Level 3; however, this was when the Appellant’s age was 4 years and 5 months old. This assessment (Exhibit D-4) noted a difficulty in obtaining an accurate diagnosis due to the Appellant’s age and significant ASD symptoms at the time. The assessment (Exhibit D-4) recommended a reassessment of the Appellant’s intellectual skills in the future. For these reasons, the more recent assessment offers the more convincing diagnosis of the Appellant. Because the Appellant did not meet the policy requirements for a severe and chronic related condition, the Respondent correctly determined the Appellant did not meet the diagnostic component of the medical eligibility requirements for the I/DD Waiver Program.

Functionality for the Appellant was noted in narrative descriptions and quantified using testing instruments. The Appellant was evaluated using the ABAS-3, a test normed according to I/DD Waiver policy requirements and with skill areas corresponding to all of the I/DD Waiver “major life areas” except for mobility. Based on these test results, the Appellant demonstrated substantial deficits in *Functional academics*, or *learning*; and *Receptive or expressive language*, or *communication*. The Appellant obtained eligible scores in two parts, or subdomains, of the “major life area” *Capacity for Independent Living*, which is insufficient per policy to establish a deficit in this domain. With only two of the three “major life areas” required by policy, the Appellant did not meet the functionality requirements for the I/DD Waiver Program.

The Appellant’s mother testified regarding the Appellant. She explained the Appellant is a difficult child that cannot communicate. The Appellant avoids the use of an assistive communication device. The Appellant insists on specific routines and dietary preferences and frequently has “melt downs.” The Appellant’s mother testified that the Appellant does not have a sense of safety and will run into traffic if she is not prevented from doing so.

Although the evidence and testimony at the hearing clearly showed the difficulties and limitations of the Appellant, the extent of the difficulties and limitations did not meet the thresholds set by I/DD Waiver Program policy. Because the Appellant did not meet the diagnostic or functionality components of medical eligibility for the I/DD Waiver Program, the Respondent’s decision to deny the Appellant’s I/DD application on those bases is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not have a diagnosis of intellectual disability or a related condition which is chronic and severe in nature, the Appellant did not meet the diagnostic component of medical eligibility for the I/DD Waiver Program.

- 2) Because the Appellant did not establish deficits in at least three (3) of the six (6) major life areas set by policy, the Appellant did not meet the functionality component of medical eligibility for the I/DD Waiver Program.
- 3) Because the Appellant did not meet medical eligibility requirements for the I/DD Waiver Program, the Respondent must deny the Appellant's application for the I/DD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's application for the I/DD Waiver Program based on unfavorable medical eligibility findings.

ENTERED this _____ day of July 2025.

Todd Thornton
State Hearing Officer