



July 30, 2025

[REDACTED]

RE: [REDACTED] PROTECTED INDIVIDUAL v. WV DoHS/BMS  
ACTION NO.: 25-BOR-2287

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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: WV DoHS/BMS, PC&A, ACENTRA

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 25-BOR-2287**

**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 23, 2025.

The matter before the Hearing Officer arises from the June 2, 2025 decision by the Respondent to deny I/DD Waiver program services.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by his mother ■. Appearing as witnesses for the Appellant were ■. All 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 -513.6.4
- D-2 Denial Notice, dated June 2, 2025
- D-3 Independent Psychological Evaluation, evaluation date May 28, 2025
- D-4 Eligibility Committee Report ■ Local Educational Authority, May 1, 2025
- D-5 ■ County Public Schools Combined Developmental and Speech/Language Assessment, April 24, 2025
- D-6 Individualized Education Program, ■ County Schools (initialed), meeting date May 1, 2025
- D-7 Individualized Education Program, ■ County Schools (unsigned), meeting date May 1, 2025

**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 I/DD Waiver program but was denied medical eligibility, on June 2, 2025, because the submitted documentation did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. (Exhibit D-2)
- 2) On June 2, 2025, the Respondent issued a denial notice explaining that the Appellant met substantial adaptive deficits in the major life areas of *Self-Direction* and *Capacity for Independent Living* (CIL). (Exhibit D-2)
- 3) As part of the I/DD Waiver program application process, the Appellant was evaluated in an Independent Psychological Evaluation (IPE) conducted on May 28, 2025 by [REDACTED]. (Exhibit D-3)
- 4) On the May 2025 IPE [REDACTED] diagnosed the Appellant with:
  - Mild Intellectual Disability
  - Autism Spectrum Disorder, social communication requiring substantial support (Level 2), restricted, repetitive behavior requiring substantial support (Level 2), with accompanying language impairment, with accompanying cognitive impairment
  - Attention Deficit/Hyperactivity Disorder, Combined
  - Constipation with overflow incontinence
  - Insomnia
  - Parent-child relational problem. (Exhibit D-3)
- 5) The Appellant has a program eligible diagnosis of intellectual disability (ID).
- 6) The Appellant meets two substantial functional limitations needed for program eligibility in *Self-Direction* and *Capacity for Independent Living* (CIL).
- 7) On the May 2025 IPE, the Appellant's adaptive behavior was evaluated using the Adaptive Behavior Assessment System, Third Edition (ABAS-3), which produces results scaled to a mean of 10 and a standard deviation of 3, scores of 1 and 2 are deemed to be indicative of a substantial deficit in the area tested.

- 8) On the ABAS-3 was completed by the Appellant's mother and [REDACTED], the Appellant obtained a qualifying score of 1 in the areas of *Self-Direction* and *Capacity for Independent Living (CIL)*. (Exhibits D-3)
- 9) With results on the May 2025 ABAS-3 in other tested areas ranging from 3 to 5, the Appellant did not have scores indicating substantial functional deficits required for program eligibility. (Exhibit D-3)
- 10) The narratives provided in the May 2025 IPE corroborate the test scores obtained on the ABAS-3. (Exhibit D-3)

### **APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Provider Manual §513.6.2, *Initial Medical Eligibility*:** To be medically eligible, the applicant must require a 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 IDDW 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.

**Bureau for Medical Services Provider Manual §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 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 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.

#### **Bureau for Medical Services Provider Manual §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 75<sup>th</sup> 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.

#### **Bureau for Medical Services Provider Manual §513.6.2.3, *Active Treatment***

Documentation must support that 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**

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver program: 1) Diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22; 2) Functionality of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, 3) Active Treatment - the need for active treatment, 4) ICF/IID Level of Care need for services under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services. 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 need the same level of care and services provided in an ICF/IID setting.

The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicant eligibility for the I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through review of an Independent Psychological Evaluation (IPE) report. The MECA determines if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility. The Respondent must show by a preponderance of evidence that it correctly denied the Appellant's I/DD Waiver application.

Charley Bowen, the Respondent's consulting psychologist from PC&A, conceded that the Appellant met the diagnostic criteria for program eligibility. However, because the Appellant only demonstrated substantial deficits in two major life areas of the required three or more, he did not meet the functionality criteria.

Mr. Bowen reviewed the submitted documentation, including the May 2025 IPE narratives and scores in the ABAS-3, which were derived from the responses provided by the Appellant's mother, [REDACTED]. The ABAS-3 produces results scaled to a mean of 10 and a standard deviation of 3, scores of 1 and 2 are deemed to be indicative of a substantial deficit in the area tested. In reviewing the ABAS-3 scores, the Appellant achieved qualifying scores in the areas of *Self-Direction* and *Capacity for Independent Living* (CIL).

Mr. Bowen stated that the Appellant had a score of 3 in the area of *Communication* and a score of 5 in the area of *Self-Care*, which were supported by the narratives. With regard to the Appellant's communication, Mr. Bowen noted that although the Appellant does have difficulty in the area of *Communication*, it does not rise to the level of program eligibility. Mr. Bowen testified that individuals in an ICF/IID setting usually cannot communicate at all or understand directives. The IPE narrative indicated that the Appellant is able to follow directions, is able to ask for help, and does try to communicate. Additionally, on the Appellant's [REDACTED] County Schools Combined Developmental and Speech/Language Assessment completed on April 24, 2025, it documents that the Appellant is able to ask for food when hungry and is able to anticipate and communicate his toileting needs. The [REDACTED] County Schools Individualized Education Program (IEP) of May 1,

2025, indicated that in a Clinical Evaluation in Language Fundamentals (CELF-P3) completed on March 26, 2025, showed that the Appellant had a core language score of 64. Mr. Bowen testified that to be program eligible, an average score of 100 with a standard deviation of 15, or scores of 55 or below, must be attained.

Regarding the major life area of *Self-Care*, Mr. Bowen testified that the narrative in the May 2025 IPE, indicates that the Appellant is able to perform self-care tasks independently or with prompting. The Appellant can brush his teeth, dress himself (under protest), can bathe himself, and can independently use the toilet for urination. Mr. Bowen also noted during the May 2025 IPE that the Appellant can assist with dessert and is able to use a fork and spoon to eat.

██████ testified that the Appellant urinates in the living room and has a “pooping problem”. Additionally, ██████ added that the Appellant must be supervised at all times because he has elopement issues and hurts his brother and the family dog. The issues raised by ██████ appear to be those relative to the diagnoses found in the May 2025 IPE. The Board of Review cannot draw clinical conclusions regarding the Appellant's functional abilities and severity beyond what is identified by the Independent Psychological Evaluations and corroborated by the submitted information. 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 Independent Psychological Evaluations and corroborated by the submitted information.

Whereas the documentation submitted failed to demonstrate the presence of at least three substantial adaptive deficits out of the six major life areas, the functionality criteria for the I/DD Waiver Program was not established. Therefore, the Respondent’s denial of the Appellant’s I/DD Waiver program application is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Because the documentation submitted for program application did not show that the Appellant demonstrated substantial deficits in at least three out of the six major life areas to meet the functionality criteria for the I/DD Waiver program, the functionality component of medical eligibility is unmet.
- 2) Because the functionality component was not met, the Appellant did not meet medical eligibility for the I/DD Waiver program.
- 3) Because the Appellant did not meet the medical eligibility requirements, the Respondent correctly denied 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 I/DD Waiver Program application.

**ENTERED this 30<sup>th</sup> day of July 2025.**

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**Lori Woodward, Certified State Hearing Officer**