



August 28, 2025

[REDACTED], A PROTECTED INDIVIDUAL
[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDOHS
ACTION NO.: 25-BOR-2407

Dear Mr. and Mrs. [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-2407

**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 August 14, 2025, upon a timely appeal filed on June 26, 2025.

The matter before the Hearing Officer arises from the June 10, 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 Charley Bowen. The Appellant was represented by his parents, **REMOVED** █████. The Appellant, █████ and █████ testified on the Appellant's behalf. 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 June 10, 2025 |

D-3 Independent Psychological Evaluation (IPE)
Date of evaluation: May 29, 2025

D-4 Independent Psychological Evaluation (IPE)
Date of evaluation: March 14, 2025

D-5 Notice of decision, dated April 24, 2025

D-6 Undated medical information regarding the Appellant
Insurance card for the Appellant

D-7 GeneSight Psychotropic Pharmacogenomic Test
Report date: May 2, 2024

D-8 Individualized Education Program (IEP)
[REDACTED] County Schools
IEP Meeting date: January 22, 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 has twice 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) Charley Bowen, a licensed psychologist employed by PC&A, made the eligibility determinations regarding the Appellant.
- 4) The Respondent issued a notice (Exhibit D-5), dated April 24, 2025, denying the Appellant's first I/DD Waiver Program application.
- 5) This notice (Exhibit D-5) reads, in part, "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."

- 6) This notice (Exhibit D-5) further explained that the documentation regarding the Appellant “failed to demonstrate substantial limitations” in all major life areas with the exception of *Receptive or Expressive Language*.
- 7) Subsequent to this decision, the Appellant requested a second medical opinion and reapplied for the I/DD Waiver Program.
- 8) The Respondent issued a notice (Exhibit D-2), dated June 10, 2025, denying the Appellant’s second I/DD Waiver Program application.
- 9) The June 2025 notice (Exhibit D-2) provided the basis for denial as “Documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe at present. Further, documentation is inconsistent with respect to functionality and the need for an ICF level of care cannot be determined.”
- 10) Licensed psychologist **REMOVED** M.A., conducted an Independent Psychological Evaluation (IPE) of the Appellant on March 14, 2025, and prepared a report of the IPE on April 21, 2025. (Exhibit D-4)
- 11) Licensed psychologist **REMOVED** conducted an IPE of the Appellant on May 29, 2025, and prepared the IPE report on June 6, 2025. (Exhibit D-3)
- 12) The Appellant was tested using the Adaptive Behavior Assessment System, Third Edition (ABAS-3) during his first IPE. (Exhibit D-4)
- 13) The ABAS-3 is a tool used to measure adaptive behavior which meets the policy requirement for an “appropriate standardized test for measuring adaptive behavior,” with skill areas corresponding to all “major life areas” defined by policy with the exception of *Mobility*.
- 14) ABAS-3 skill area scores of 1 or 2 are “eligible scores,” which satisfy part of the policy requirement for “not only the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review...”
- 15) The first IPE for the Appellant (Exhibit D-4) includes a section discussing the Appellant’s ABAS-3 results under the heading “Validity” which clearly references a different person with the same first name as the Appellant and a test reporter unrelated to the Appellant.
- 16) The Appellant is referred to only by his first name numerous times throughout the IPE (Exhibit D-4) which references another individual in the parent-scored section of the ABAS-3 results.
- 17) This IPE (Exhibit D-4) also includes teacher-scored ABAS-3 results with a “Validity” section which correctly identifies the Appellant by his full name and correctly identifies the Appellant’s special education teacher, **[REDACTED]**

- 18) Mr. Morgan, the assessing psychologist for the first IPE (Exhibit D-4) noted in the teacher-scored ABAS-3 “Validity” section that “...it is my professional opinion that the teachers [*sic*] ABAS-3 is an under estimated [*sic*] account of [Appellant’s] current abilities...”
- 19) The Appellant’s teacher-scored ABAS-3 results from the first IPE (Exhibit D-4) included eligible scores in the following skill areas: *Community Use* (2), *School Living* (2), *Health and Safety* (1), *Social* (2).
- 20) The ABAS-3 skill area of *Community Use* corresponds to the *community* sub-domain of *Capacity for Independent Living*.
- 21) The ABAS-3 skill area of *Health and Safety* corresponds to the *health and safety* sub-domain of *Capacity for Independent Living*.
- 22) The ABAS-3 skill area of *Social* corresponds to the *social skills* sub-domain of *Capacity for Independent Living*.
- 23) The Appellant was tested using the Childhood Autism Rating Scale (CARS) during his first IPE, and the results are referenced in a section which explicitly identifies the Appellant’s “adoptive parents [REDACTED]” as the reporters for the test. (Exhibit D-4)
- 24) The assessing psychologist’s comments on the Appellant’s CARS results read, in part, “[Appellant’s] overall raw score on the CARS was 53. This places him in the Severe Autistic Range (37-60) on the CARS and is suggestive of an individual at higher risk for the diagnosis of Autism.” (Exhibit D-4)
- 25) The first IPE (Exhibit D-4) of the Appellant offers the following diagnostic impressions (without referencing the Appellant by his first name or his full name):
 - F84.0 Autism Spectrum Disorder Level III with accompanying language impairment
 - F90.2 ADHD Combined Type
- 26) The first IPE (Exhibit D-4) of the Appellant provides a summary section which reads, in part, “[Appellant’s] testing indicates significant clinically developmental delays in several areas of Development. The CARS score falls in the severe range of the Autism Spectrum. He will be given the Dx of ASD Level III based on the mental status, record review, ABAS III assessment, CARS and DSM-V TR criteria...”
- 27) To be a related condition which is severe, Autism Spectrum Disorder must be diagnosed at Level 3.
- 28) The first IPE of the Appellant provided an eligible diagnosis for the I/DD Waiver Program. (Exhibit D-4)

- 29) The first IPE of the Appellant did not establish functionality for the I/DD Waiver Program. (Exhibit D-4)
- 30) On the second IPE (Exhibit D-3), the Appellant was assessed using the Developmental Profile 4 (DP-4).
- 31) The DP-4 produces results with a mean of 100 and a standard deviation of 15.
- 32) The assessing psychologist for the second IPE (Exhibit D-3) noted that the DP-4 was completed by the Appellant's father because the Appellant's "...lack of cooperation precluded formal assessment of his intellectual functioning."
- 33) The Appellant obtained DP-4 standard scores for the following test scales: *Physical* (51), *Adaptive Behavior* (78), *Social-Emotional* (40), *Cognitive* (102), *Communication* (110).
- 34) On the second IPE (Exhibit D-3), the Appellant was assessed using the ABAS-3 with the Appellant's father and mother listed as test reporters.
- 35) On the second IPE (Exhibit D-3), for the ABAS-3 skill area of *Communication*, the Appellant obtained a standard score of one (1) based on the test completed by the Appellant's father, and a standard score of two (2) based on the test completed by the Appellant's mother.
- 36) On the second IPE (Exhibit D-3), for the ABAS-3 skill area of *Leisure*, the Appellant obtained a standard score of one (1) based on the test completed by the Appellant's father, and a standard score of two (2) based on the test completed by the Appellant's mother.
- 37) On the second IPE (Exhibit D-3), the Appellant's ABAS-3 results for all remaining skill areas were eligible scores as reported by the Appellant's father: *Community Use* (2), *Functional Academics* (1), *Home Living* (1), *Health and Safety* (1), *Self-Care* (1), *Self-Direction* (1), and *Social* (1).
- 38) On the second IPE (Exhibit D-3), the Appellant's ABAS-3 results for the same remaining skill areas were ineligible scores as reported by the Appellant's mother: *Community Use* (6), *Functional Academics* (6), *Home Living* (7), *Health and Safety* (6), *Self-Care* (5), *Self-Direction* (5), and *Social* (5).
- 39) On the second IPE (Exhibit D-3), the Appellant was assessed using the Gilliam Autism Rating Scale, Third Edition (GARS-III), with the Appellant's father listed as the test reporter.
- 40) The Appellant's GARS-III results include an Autism Index of 58, the probability of Autism Spectrum Disorder (ASD) noted as "probable," and a Severity Level of 1. (Exhibit D-3)

41) The assessing psychologist for the Appellant's second IPE (Exhibit D-3) offered the following diagnoses for the Appellant:

F84.0 Autism Spectrum Disorder, with Accompanying Language Impairment, Requiring Level 2 Support for Social Communication; and Level 1 Support for Restricted/Repetitive Behavior

F90.2 Attention-Deficit/Hyperactivity Disorder, Combined Presentation (by history)

F95.9 Specified Tic Disorder (provisional)

42) The second IPE of the Appellant did not provide an eligible diagnosis for the I/DD Waiver Program. (Exhibit D-3)

43) The second IPE of the Appellant did not establish functionality for the I/DD Waiver Program. (Exhibit D-3)

44) The Appellant's Individualized Education Program (IEP) developed on January 22, 2025, by [REDACTED] County Schools, noted the Appellant "...is not on Alternate Standards." (Exhibit D-8)

45) Narrative from the Current Behaviors section of the Appellant's second IPE (Exhibit D-3) reads, in part, "[Appellant's] father noted that [Appellant] requires no hands-on assistance with his self-care..."

46) Narrative from the Current Behaviors section of the Appellant's second IPE (Exhibit D-3) reads, in part, "[Appellant] exhibits expressive communication deficits...Mr. [REDACTED] speculated that [Appellant's] receptive communication is fairly well developed..."

47) Narrative from the Current Behaviors section of the Appellant's second IPE (Exhibit D-3) reads, in part, "[Appellant] has no known prominent mobility issues and uses no mechanical aids..."

48) The Appellant has a history of eloping.

49) The Appellant jumped from the window of his home and fractured his foot.

50) The Appellant's parents work full-time and cannot obtain transportation or supervision of the Appellant after school or upon early release from school.

51) The Appellant cannot be safely transported home from school or remain at home alone without appropriate supervision.

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 his 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.

Applicants for the I/DD Waiver Program must establish medical eligibility in four components: diagnostic, functionality, the need for active treatment and the requirement of an ICF/IID level of care. The documents to support findings in these components typically include an IPE prepared by a licensed psychologist. For the assessing psychologist's findings to be reliable, the report itself must be reliable.

The first IPE of the Appellant is at least partly unreliable because of an error in the report. The psychologist referenced another person with the same first name, and the name of that person's mother in conjunction with ABAS-3 results shown in the report. Those results cannot be reliably attributed to the Appellant. Further, additional sections of the report are unreliable because the psychologist referenced the Appellant only by his first name, leaving those sections ambiguous and unreliable.

What can be preserved from the first IPE is the psychologist's diagnosis and the CARS results based on the reporting of the Appellant's parents. The ABAS-3 results were accompanied by a clear identification of the Appellant and his teacher, and the CARS results were similarly linked to the Appellant's parents. The diagnosis on its own did not clearly link to the Appellant, but the summary section reiterated the diagnosis of the Appellant with references to reliable portions of the IPE and is found reliable. Although the ABAS-3 results based on the teacher's reporting are clearly linked to the Appellant the psychologist found them unreliable. This report established an eligible diagnosis but did not establish functionality.

The second IPE of the Appellant presented a separate reliability issue. A functionality finding from the Appellant's ABAS-3 results is complicated by contradictory reporting from the Appellant's parents. If the ABAS-3 results based on the father's reporting are arbitrarily accepted, the Appellant has established eligibility in every skill area on the test. However, the Appellant's ABAS-3 scores based on the reporting of the Appellant's mother contradicts this in every skill area except for *Communication* and *Leisure*. The ABAS-3 results based on the father's reporting are further diminished by narrative from the father describing the Appellant as requiring "no hands-on assistance with his self-care," in conjunction with test reporting for the same ABAS-3 skill area

resulting in the lowest possible score. Based on the skill areas where the parents agree (as opposed to making an arbitrary choice between them), the Appellant established test scores indicative of a deficit in *Receptive or Expressive Language*, the major life area corresponding to the ABAS-3 skill area of *Communication*. The test score for *Leisure* corresponds to a subdomain by the same name in the major life area *Capacity for Independent Living*. Policy requires three subdomains of *Capacity for Independent Living* to be met for the major life area to be established as a whole. Policy requires three major life areas to establish the functionality component of medical eligibility for the I/DD Waiver Program.

Narrative from the second IPE describes the Appellant as having a degree of independence that contradicts a need for active treatment. Testimony from the Respondent's expert witness explained that some limitations or a need for prompting do not rise to the level of active treatment. The Appellant's school noted that he is not on "Alternate Standards." Testimony from the Appellant demonstrated his difficulty answering questions during the hearing. Testimony and evidence did not show a need for active treatment or an ICF/IID level of care.

Testimony from the Appellant's parents described a history of abuse and neglect prior to their fostering and adoption of the Appellant. Testimony from the Appellant's parents also showed clear issues with safety, as the Appellant has a history of eloping, and on one occasion, jumped out of a window resulting in a fractured foot. The Appellant nearly walked from the side of a road into traffic but was stopped by his father. The Appellant cannot safely ride the school bus and the Appellant's parents lack transportation and childcare solutions for the Appellant upon regular or early release from school. *Safety* is a sub-domain of the major life area of *Capacity for Independent Living*, and testimony supports a deficit in this area but does not contribute additional deficits towards the three required to establish the functionality component of I/DD medical eligibility.

Although the second IPE did not provide an eligible diagnosis, the Appellant established the diagnostic component of medical eligibility from an eligible diagnosis on the first IPE. Testimony and evidence showed that the Appellant demonstrated a substantial deficit in *Receptive or Expressive Language*, but with only one deficit the policy requirement for three is unmet. The Appellant did not meet the functionality requirements for the I/DD Waiver Program, or the requirements for a need for active treatment and an ICF/IID level of care. Policy requires each of these four components to establish I/DD medical eligibility as a whole. The Respondent correctly denied the Appellant's application for I/DD Waiver services based on unfavorable medical eligibility findings.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not establish deficits in at least three of the six major life areas set by policy, the Appellant did not meet the functionality component of medical eligibility for the I/DD Waiver Program.
- 2) Because there was no evidence or testimony to support the Appellant's need for active treatment or an ICF/IID level of care, these components of medical eligibility for the I/DD Waiver Program were not met.

- 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 August 2025.

Todd Thornton
State Hearing Officer