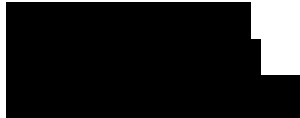




September 11, 2025



RE: ██████████ A PROTECTED INDIVIDUAL v. BMS
ACTION NO.: 25-BOR-2607

Dear ██████████:

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: BMS/Acentra/PC&A

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

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 25-BOR-2607

**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 September 10, 2025, on an appeal filed with the Board of Review on August 7, 2025.

The matter before the Hearing Officer arises from the July 7, 2025 decision by the Respondent to deny the Appellant's application for benefits and services under the Intellectual/Developmental Disabilities Waiver Program. (I/DD)

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist for the Bureau of Medical Services. The Appellant was represented by his mother, ■. ■. 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 - 513.6.3
- D-2 Notice of Decision dated July 16, 2025
- D-3 Independent Psychological Evaluation dated July 7, 2025
- D-4 Notice of Decision dated May 15, 2025
- D-5 Independent Psychological Evaluation dated April 16, 2025
- D-6 Mental Assessment from Milestones*
- D-7 Individual Education Program dated February 28, 2025
- D-8 ■ Schools Parent Report dated January 28, 2025
- D-9 ■ Schools Battelle Developmental Inventory dated December 2, 2024
- D-10 ■ Schools Evaluation Report dated January 28, 2025

- D-11 [REDACTED] Schools Health-Speech Language Evaluation
D-12 Speech or Language Impairment Team Report
D-13 [REDACTED] Schools Speech and Language Evaluation-Preschool Clinic dated January 28, 2025
D-14 [REDACTED] Schools Nursing IHP/Pervasive Development Disorder and Autism Report

*Presented documentation is illegible; however, testimony indicated that the corresponding information was outlined in other presented documentation.

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, through his mother, applied for benefits and services through the Respondent's Intellectual and Developmental Disabilities Waiver (IDD) program.
- 2) The Appellant is a four-year-old child.
- 3) On April 16, 2025, an Independent Psychological Evaluation (IPE) (Exhibit D-5), a requirement of the application process, was completed with the Appellant and his mother.
- 4) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, and Attention Deficit Hyperactivity Disorder, Combined Presentation on the IPE. (Exhibit D-5)
- 5) On May 15, 2025, the Respondent issued a Notice of Decision (Exhibit D-4) informing the Appellant that his application for I/DD services had been denied because he failed to meet the diagnostic criteria. Specifically, the notice documents that the initial waiver application was denied because "documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe. In order to be considered a severe Related Condition, Autism Spectrum Disorder must be diagnosed at Level 3".
- 6) The Notice of Decision (Exhibit D-4) afforded the Appellant the right to a second psychological evaluation at the Respondent's expense if the request was exercised within sixty calendar days of the decision.
- 7) The Appellant exercised his right to a second psychological evaluation.

- 8) On July 7, 2025, the Appellant and his mother completed an additional IPE with a different evaluation psychologist. (Exhibit D-3)
- 9) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, Requiring Substantial Support, Attention-Deficit Hyperactivity Disorder and Oppositional Defiant Disorder. (Exhibit D-3)
- 10) On July 16, 2025, the Respondent issued a Notice of Decision (Exhibit D-2) informing the Appellant that his application for I/DD Waiver services had been denied because he failed to meet the diagnostic criteria. Specifically, the notice indicates the initial waiver application was denied because “documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe. In order to be considered a severe Related Condition, Autis Spectrum Disorder must be diagnosed at Level 3”.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that 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.

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.

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.

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

Policy requires that an applicant for IDD Waiver program services must have written documentation that they meet eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of the IPE report completed by a member of the Independent Psychological Network. The Respondent contracts with Psychological

Consultation and Assessment (PC&A) as the MECA to determine applicant eligibility for the IDD Waiver Program. The MECA determines if the information provided aligns with the policy criteria for establishing Medicaid IDD Waiver eligibility. The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding about the Appellant's IDD Waiver eligibility.

To be determined eligible for the IDD Waiver program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment and the requirement of ICF/IID level of care. Eligibility is established for the diagnostic criteria when an individual presents 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.

The Respondent denied the Appellant's application for failure to meet the diagnostic criteria. The Respondent contends that information concerning the Appellant's diagnosis of Autism Spectrum Disorder Level 2, a related condition under program guidelines, failed to demonstrate a severe and chronic disability. The Respondent must prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic eligibility standards.

Charley Bowen, the Respondent's witness, testified that the Appellant failed to meet the diagnostic criteria due to his diagnosis of Autism Spectrum Disorder failing to meet the severity criteria. The Appellant's diagnosis of Autism Spectrum Disorder is considered a related condition under program guidelines; however, the condition must be considered severe and chronic. Mr. Bowen indicated that in order to meet the severity criteria, an Autism Spectrum Disorder diagnosis must be rated at a Level 3.

On April 16, 2025, the Appellant, with his mother, completed an IPE with attending psychologist, [REDACTED]. During the evaluation, the Appellant was administered a Childhood Autism Rating Scale (CARS-2) in which he achieved a total score of 31.5. The attending psychologist noted that the total scores placed the Appellant in a Mild to Moderate symptoms of an Autism Spectrum Disorder. The attending psychologist offered diagnoses of Autism Spectrum Disorder, Level 2, and Attention Deficit Hyperactivity Disorder. Based on the issued diagnosis, the Respondent denied the Appellant's application (Exhibit D-4) because he failed to present an eligible diagnosis of an Intellectual Disability or a related condition which is severe.

The Appellant exercised his right to a second medical opinion and completed an additional IPE with attending psychologist, [REDACTED] on July 7, 2025. During the evaluation, the Appellant was administered an autism screening (GARS-3) in which the Appellant achieved an Autism Index of 83 which yielded a very likely probably of a Level 2 autism diagnosis. Additionally, the Appellant was administered a WPPSI-IV, as measure of his intellectual and cognitive abilities. The Appellant achieved a full-scale composite score of 70. Mr. Bowen indicated that achieved scores on the administered test of 69 or below determines the presence of an intellectual disability. However, the attending psychologist noted that the Appellant was not cooperative for multiple of the associated subtests; therefore, due to the majority of the subtests not being valid, the composite scores could not be fully interpreted. Mr. Bowen opined that because that Appellant did not complete several of the subtests, his composite score may be higher

than the achieved score. Based on the IPE, the attending psychologist offered an Autism Spectrum Disorder, Level 2, requiring Substantial Support, Attention-Deficit Hyperactivity Disorder, and Oppositional Defiant Disorder.

The Appellant's representatives and witnesses provided testimony revealing their concern for the safety and well-being of the Appellant. The Appellant's representative cited multiple occasions in which the child had eloped from his caretaker both at home and in a public setting. The Appellant's representative acknowledged the behavior and aggression issues of the child and indicated that he was removed from the care of his daycare and a behavioral plan has been instituted in the school setting.

The Appellant presented a diagnosis of Autism Spectrum Disorder, a related condition under the program; however, on multiple occasions the Appellant's Autism Spectrum Disorder was assessed at a Level 2. To be determined eligible, an Autism Spectrum Disorder must be considered severe and chronic. Because the documentation did not establish the presence of a severe related condition, the Appellant failed to meet the diagnostic criteria. Whereas the Appellant did not meet the diagnostic 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 medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.
- 2) Presented documentation failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or a 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 ____ day of September 2025.

Eric L. Phillips
State Hearing Officer