



September 16, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS/BMS
ACTION NO.: 25-BOR-2658

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,

Tara B. Thompson, MLS
Certified State Hearing Officer
Member, State Board of Review

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

cc: Angela Signore, Bureau for Medical Services

Kerri Linton, Psychological Consultation and Assessment
Janice Brown, Acentra

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

■ A JUVENILE,

Appellant,

v.

Action Number: 25-BOR-2658

**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 juvenile. 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 2, 2025.

The matter before the Hearing Officer arises from the Respondent's decision on July 24, 2025, to deny the Appellant's medical eligibility for the Medicaid Intellectual and Developmental Disabilities Waiver program.

At the hearing, the Respondent appeared by Charley Bowen, Psychological Consultation & Assessment (PC&A). Observing on behalf of the Respondent was Crystal Dotson, PC&A. The Appellant was represented by his mother, ■. Appearing as a witness for the Appellant was his Nurse Practitioner, ■. All witnesses were placed under oath and the following exhibits were admitted to the record.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual Chapter 513 excerpts
- D-2 DoHS BMS Notice, dated July 24, 2025
- D-3 Independent Psychological Evaluation (IPE), dated July 21, 2025
- D-4 ■ Assessment, dated June 13, 2022
- D-5 Individualized Education Program, ■ Schools, finalized May 2, 2025
- D-6 Partial IPE, by ■, undated

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) On July 24, 2025, the respondent issued a notice advising that the Appellant's medical eligibility for the Medicaid I/DD Waiver program was denied because the submitted documentation did not indicate an eligible diagnosis, Intermediate Care Facility (ICF) level of care, or the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility (Exhibit D-2).
- 2) Specifically, the *Notice* specified, "To be considered a severe Related Condition, Autism Spectrum Disorder must be diagnosed at Level 3" (Exhibit D-2).
- 3) The Respondent's July 24, 2025, decision was based on the review of "7/21/25 IPE; 6/13/22 Evaluation/Assessment Report Comprehensive Autism Spectrum Disorder Evaluation; 5/1/25 [REDACTED] Schools IEP; (partial, undated) Evaluation from [REDACTED]" (Exhibit D-2).
- 4) On July 21, 2025, Licensed Psychologist [REDACTED] completed an Independent Psychological Evaluation (IPE) with the Appellant (Exhibit D-3).
- 5) The Appellant was six years old during the July 21, 2025, IPE (Exhibit D-3).
- 6) The Appellant's mother and father provided information to [REDACTED] during the IPE (Exhibit D-3).
- 7) [REDACTED] considered the results of: "Psychological Evaluation: 06/13/2022 – [REDACTED] at [REDACTED] 12/05/2023 [REDACTED]" (Exhibit D-3).
- 8) [REDACTED] administered a Battelle Developmental Inventory-2 (BDI-2).
- 9) [REDACTED] was unable to administer the WISC-V because the Appellant had significant difficulty understanding and following directions (Exhibit D-3).
- 10) [REDACTED] administered the Adaptive Behavior Assessment System – Third Edition (ABAS-3), which resulted in scaled scores of 3 through 8 (Exhibit D-3).
- 11) [REDACTED] ABAS-3 *Discussion* narrative reflected she believed the scores to be a valid estimate of his overall adaptive behaviors (Exhibit D-3).

- 12) Severe functioning deficits are demonstrated by ABAS-3 scaled scores of 1 or 2.
- 13) [REDACTED] administered a Wide Range Achievement Test- Fifth Edition (WRAT-5) (Exhibit D-3).
- 14) [REDACTED] administered the Gilliam Autism Rating Scale-Third Edition (GARS-3) and concluded that the assessment results were valid and consistent with information gathered during the assessment interview and observation (Exhibit D-3).
- 15) The GARS-3 results indicated the presence of autism spectrum disorder, level 2 (Exhibit D-3).
- 16) [REDACTED] diagnosed the Appellant with autism spectrum disorder, level 2 (Exhibit D-3).
- 17) According to the current diagnostic criteria, severe autism spectrum disorder is indicated with a level 3.
- 18) On June 13, 2022, [REDACTED] and [REDACTED] conducted a Comprehensive Autism Spectrum Disorder Evaluation with the Appellant (Exhibit D-4).
- 19) The Appellant was three years old at the time of the evaluation with [REDACTED] (Exhibit D-4).
- 20) The Appellant's mother provided information to [REDACTED] during the Appellant's evaluation (Exhibit D-4).
- 21) [REDACTED] administered an Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) during the evaluation (Exhibit D-4).
- 22) On the *Evaluation/Assessment Report*, [REDACTED] provided a diagnosis of Delayed Milestone in Childhood and Mixed Receptive/Expressive Language Disorder (Exhibit D-4).
- 23) [REDACTED] electronically signed the *Evaluation/Assessment Report* (Exhibit D-4).
- 24) On May 2, 2025, the Appellant's [REDACTED] Schools Individualized Education Program (IEP) was finalized (Exhibit D-4).
- 25) The Appellant needs assistive devices or services, has communication needs, and has behavior that impedes his learning or the learning of others (Exhibit D-5).
- 26) The Appellant receives 63% of his instruction in a general education environment and 37% of his instruction in a special education environment (Exhibit D-5).
- 27) When the Appellant was 4 years and 7 months old, [REDACTED] completed an assessment with the Appellant to evaluate a speech delay (Exhibit D-6).

- 28) The Appellant's mother and father provided information to [REDACTED] during the assessment (Exhibit D-6).
- 29) [REDACTED] administered a Childhood Autism Rating Scale, 2nd Edition (CARS-2) (Exhibit D-6).
- 30) The CARS-2 *Severity Group* reflected mild to moderate symptoms of autism spectrum disorder (Exhibit D-6).
- 31) The narrative provided by [REDACTED] reflected a diagnosis for the Appellant of autism spectrum disorder, level 2 (Exhibit D-6).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 400.5.2 *Intellectual and Developmental Disabilities Waiver* provides that the I/DD Waiver program is West Virginia's Home and Community Based Services program for individuals with intellectual and/or developmental disabilities that are at least three years of age. The I/DD Waiver program provides services based on a person's annual functional assessment.

BMS § 513.6 *Applicant Eligibility and Enrollment Process* provides in relevant sections: To be eligible for the Medicaid I/DD Waiver Program, the applicant must meet medical eligibility requirements ...

The applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN); which may include background information, mental status examination, a measure of intelligence, adaptive behavior, achievement and any other documentation deemed appropriate

The Independent Psychologist (IP) is responsible for completing an IPE The evaluation includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior.

The IPE is utilized by the MECA to make a final medical eligibility determination.

BMS Manual § 513.6.1.1 *Initial Eligibility Determination Process* provides that the applicant is given with a list of Independent Psychologists (IP) in the Independent Psychologist Network (IPN) trained by the MECA who are available within the applicant's geographical area. The applicant chooses a psychologist in the IPN and contacts the IP to schedule the appointment within 14 days.

The IP is responsible for completing an Independent Psychological Evaluation (IPE) that includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is utilized by the MECA to make a medical eligibility determination.

Any applicant denied medical eligibility may re-apply to the Medicaid I/DD Waiver program at any time.

BMS Manual § 513.6.2 *Initial Medical Eligibility* provides:

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

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 [Medicaid I/DD Waiver] 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 [Medicaid 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

BMS Manual § 513.6.2.1 *Diagnosis* provides:

The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested before age 22 or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

Examples of related conditions that may, if severe and chronic in nature, make an individual eligible for the IDWW 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 also 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 under Section 513.6.2.2 *Functionality*.

Code of Federal Regulations 42 CFR § 440.150(a)(2) Intermediate Care Facility (ICF/IID) services provides 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:

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 § 456.370(b) Medical, psychological, and social evaluations provides that 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* provides that the Medicaid agency or its designee must evaluate each applicant's need for admission by reviewing and assessing the evaluations required by § 456.370.

DISCUSSION

The Appellant was denied medical eligibility for the Medicaid I/DD Waiver program because the submitted documentation did not establish the presence of an eligible diagnosis, functionality, or necessity for ICF/IID level of care. During the hearing, the Appellant's representative argued that the Appellant required substantial assistance and should be found eligible for the Medicaid I/DD Waiver program.

Psychological Consultation and Assessment (PC&A) is the Respondent's Medical Eligibility Contracted Agent (MECA). PC&A is responsible for determining applicants' eligibility for the Medicaid I/DD Waiver program by reviewing the IPE report and submitted documentation. The MECA does not have the authority to change the information submitted for review and can only determine if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility.

The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding the Appellant's Medicaid I/DD Waiver program eligibility. The Hearing Officer may not make clinical conclusions about the Appellant's diagnosis and severity and may only decide whether the Respondent correctly denied the Appellant's eligibility based on the diagnosis and severity verified in the submitted documentation.

To be eligible for the Medicaid I/DD Waiver program, the Appellant must meet the medical eligibility criteria in each category, including *diagnosis*, *functionality*, and *ICF/IID level of care*. According to the policy, the eligible condition must be severe, chronic, and manifested before age 22. The Respondent was required to base the Appellant's I/DD Waiver program eligibility determination on an IPE that corroborates the Appellant's eligible diagnosis.

Diagnosis

Under federal regulations, persons with related conditions are those with a severe, chronic disability attributable to a condition other than mental illness, found to be closely related to intellectual disability because the condition results in an impairment of general functioning like that of intellectually disabled persons, and requires treatment or services like those needed by these persons.

The policy instructs that when severe and chronic, autism spectrum disorder may be an eligible related condition. To prove that the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver program, the preponderance of evidence had to demonstrate that the Appellant did not have a diagnosis of severe and chronic autism spectrum disorder.

The policy requires the MECA to consider the current diagnostic criteria when reviewing submitted documentation for eligibility. During the hearing, the Respondent's representative testified that a diagnosis of autism spectrum disorder, level 3 met the severity criteria for Medicaid I/DD Waiver program eligibility.

Under the policy, the IPE diagnosis had to be supported by assessments and relevant measures of adaptive behavior. The federal regulations task the agency with evaluating the applicant's need for admission by reviewing and assessing the required evaluations. According to the evidence, assessments and relevant measures of adaptive behavior were administered during the IPE and were considered valid by the diagnosing clinician. Further, the evidence established that [REDACTED] considered observation, information provided by the Appellant's parents, and the results of previously administered assessments by [REDACTED]

During the hearing, the Appellant's representative and witness testified to the substantial support required to ensure the Appellant's safety and well-being. The evidence revealed that the Appellant received special education services.

While the evidence revealed the Appellant needed assistance at home and school, the policy requires documentation to verify the presence of an eligible diagnosis and requires the diagnosis and severe functioning deficits to be affirmed by a current IPE conducted by a qualifying provider. The submitted evidence revealed that the Appellant was diagnosed with autism spectrum disorder, level 2, which fails to meet the policy's severity criteria. Because the preponderance of the evidence did not reveal the presence of a diagnosis for a severe intellectual disability or a related severe and chronic condition, the Appellant's eligibility for the Medicaid I/DD Waiver program cannot be affirmed.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant must meet the medical eligibility criteria in each category: *Diagnosis, Functionality, Need for active treatment*, and *Requirement of an ICF/IID level of care*.
- 2) When diagnosed as severe and chronic, autism spectrum disorder may be an eligible related condition.
- 3) The preponderance of evidence revealed that the Appellant did not have a diagnosis of severe intellectual disability or severe autism spectrum disorder.
- 4) Because the policy requires medical eligibility to be established in each category and the submitted evidence failed to establish the presence of a qualifying diagnosis, the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's medical eligibility for the Medicaid I/DD Waiver program.

ENTERED this 16th day of September 2025.

Tara B. Thompson, MLS
Certified State Hearing Officer