



October 16, 2025

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDHS/BMS  
ACTION NO.: 25-BOR-2836

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

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

█████ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 25-BOR-2836**

**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 October 2, 2025, upon a timely appeal filed on August 25, 2025.

The matter before the Hearing Officer arises from the August 6, 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 self-represented and appeared by his 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 August 6, 2025

D-3      Independent Psychological Evaluation (IPE)  
Date of evaluation: July 24, 2025

D-4      Independent Psychological Evaluation (IPE)  
Date of evaluation: May 22, 2023

D-5      Notice of decision, dated June 27, 2023

D-6      Psychological evaluation, dated February 11, 2022

D-7      Individualized Education Program (IEP)  
[REDACTED] schools  
IEP Meeting date: April 6, 2023

D-8      Behavioral intervention plan (undated)

D-9      Treatment plan, dated March 19, 2025

D-10     Individualized Education Program (IEP)  
[REDACTED] Schools  
IEP Meeting date: March 14, 2025

D-11     Psychoeducational evaluation, dated May 12, 2025

D-12     Speech/language impairment team report, dated May 14, 2025

D-13     [REDACTED] schools speech/language report, dated April 3, 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 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, made the eligibility determination regarding the Appellant.
- 4) The Respondent issued a notice (Exhibit D-2), dated August 6, 2025, denying the Appellant's application for the I/DD Waiver Program.
- 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-5) further explained that the documentation regarding the Appellant "failed to demonstrate substantial limitations" in all major life areas except *Learning and Receptive or Expressive Language*.
- 7) The Appellant previously applied for the I/DD Waiver Program in 2023.
- 8) The Respondent issued a notice (Exhibit D-5), dated June 27, 2023, denying the Appellant's previous I/DD Waiver Program application.
- 9) This notice (Exhibit D-5) 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."
- 10) The Appellant was tested using the Adaptive Behavior Assessment System, Third Edition (ABAS-3) during his 2025 IPE. (Exhibit D-3)
- 11) 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*.
- 12) 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..."
- 13) The Appellant obtained eligible scores in *Communication* and *Functional Academics* skill areas on the ABAS-3.
- 14) The ABAS-3 skill area of *Communication* corresponds to the major life area of *Receptive or Expressive Language*.
- 15) The ABAS-3 skill area of *Functional Academics* corresponds to the major life area of *Learning*.

- 16) On the 2025 IPE (Exhibit D-3), the Appellant was assessed using the Gilliam Autism Rating Scale, Third Edition (GARS-3), with the Appellant's mother listed as the test reporter.
- 17) The Appellant's GARS-3 results include an Autism Index of 118, the probability of Autism Spectrum Disorder (ASD) noted as "very likely," and a Severity Level of 3. (Exhibit D-3)
- 18) The discussion notes accompanying the Appellant's GARS-3 results read, in part, "...the above ratings overestimate Langston's ASD symptomology." (Exhibit D-3)
- 19) The assessing psychologist for the Appellant's 2025 IPE (Exhibit D-3) offered the following diagnosis for the Appellant:

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

- 20) The Appellant was assessed using the ABAS-3 in 2023 (Exhibit D-4) and obtained eligible scores in the following skill areas: *Communication, Community Use, Functional Pre-Academics, Home Living, Health and Safety, Leisure, Self-Care, and Self-Direction.*
- 21) The Appellant was assessed using the GARS-3 in 2023 (Exhibit D-4), with a Severity Level of 3, and a discussion note which reads, in part, "...the above ratings overestimate Langston's ASD symptomology."
- 22) The Appellant was not awarded an eligible diagnosis on the 2023 IPE. (Exhibit D-4)
- 23) The Appellant was not awarded an eligible diagnosis on a 2022 Psychological evaluation. (Exhibit D-6)
- 24) The Appellant lacks awareness of safety issues related to cars or traffic.
- 25) The Appellant has difficulty with transitions and changes in routine are difficult for him.

#### **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.

**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 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.

### **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 Appellant applied for the I/DD Waiver Program in 2023 and was denied for the lack of an eligible diagnosis. The Appellant's most recent application was denied for an unmet diagnostic component and an unmet functionality component.

The Appellant's testing for functionality produced scores indicative of substantial limitations in the major life areas of *Receptive or Expressive Language* and *Learning*. Testing of the Appellant in 2023 is not given weight due to the Appellant's age and the drastic change in scores. The Appellant was three years old at the time of the 2023 test and obtained eligible scores in almost every skill area. The reliability of the 2025 test is greater because it is more current and reflects the Appellant's growth and development. The Respondent correctly determined the Appellant only met two of the three major life areas required to establish the functionality component of medical eligibility for the I/DD Waiver Program.

The Appellant has received multiple diagnoses of ASD at Level 2. Policy requires a related condition diagnosis to be severe, and ASD meets the severity requirement at Level 3. Testing at Level 3 does not substitute for a diagnosis at Level 3. The assessing psychologist twice noted that GARS-3 results for the Appellant overstated his symptomology. The assessing psychologist diagnosed the Appellant at Level 2 each time. Without a related condition diagnosis meeting the appropriate severity level (or any other eligible diagnosis), the Respondent correctly determined the Appellant did not meet the diagnostic component of medical eligibility for the I/DD Waiver Program.

The Appellant's mother testified that the Appellant lacks safety awareness. He is unaware of the risk imposed by cars and traffic. She noted calls made from the Appellant's school when he is unable to communicate his wants and needs. She is concerned the Appellant will run off while at school. She testified the Appellant is getting older and stronger and she has more difficulty managing his behaviors. She testified the Appellant has problems with changes and transitions in routines. These factors expand on narrative descriptions offered in the psychological evaluations but do not alter the unfavorable diagnostic and functionality findings. The Respondent correctly denied the Appellant's application for the I/DD Waiver Program 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 the Appellant did not have a related condition diagnosis which is severe, he did not meet the diagnostic 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 October 2025.**

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**Todd Thornton**  
**State Hearing Officer**