



October 21, 2025



RE: [REDACTED] v. DoHS/BUREAU FOR MEDICAL SERVICES
ACTION NO.: 25-BOR-2926

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,

Amy Hayes
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services
PC&A
Acentra Health

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

████████████████████,

Appellant,

v.

Action Number: 25-BOR-2926

**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 ██████████. 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 15, 2025.

The matter before the Hearing Officer arises from the September 11, 2025, decision by the Respondent to deny the Appellant's application for services through the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

At the hearing, the Respondent appeared by Charley Bowen, Licensed Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant was represented by ██████████, his wife, and also testified on his own behalf. The 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
- D-2 Notice of Denial dated September 11, 2025
- D-3 Second Independent Psychological Evaluation dated September 8, 2025
- D-4 Independent Psychological Evaluation dated July 14, 2025
- D-5 Notice of Denial dated August 6, 2025
- D-6 ██████████ Schools Individualized Education Program (IEP) excerpt dated September 3, 1996
- D-7 ██████████ Schools IEP excerpt dated April 24, 1996
- D-8 Report of Psychological Evaluation dated March 27, 1996
- D-9 Report of Achievement Testing dated March 4, 1996

D-10 [REDACTED] Schools Education Evaluation Report dated March 4, 1996
D-11 [REDACTED] Schools IEP dated October 11, 1995
D-12 [REDACTED] Schools Eligibility Committee Report dated July 7, 1997
D-13 [REDACTED] Schools Psychological Report dated May 9, 1997

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 services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant in conjunction with the IDDW application on July 14, 2025 (Exhibit D-4).
- 3) The Appellant was diagnosed with: Major Depressive Disorder, Recurrent Episode, Severe, with anxious distress, by history; and Borderline Intellectual Functioning (Exhibit D-4).
- 4) A Second IPE was conducted with the Appellant on September 8, 2025 (Exhibit D-3).
- 5) The Appellant was diagnosed with: Bipolar II Disorder, Depressed, Severe; Posttraumatic Stress Disorder (provisional); Borderline Intellectual Functioning; and Alcohol Use Disorder (Exhibit D-3).
- 6) A [REDACTED] Schools Individualized Education Program was completed for the Appellant on April 24, 1996, when he was 15 years old. That document stated: "In academic areas, [REDACTED] tests at the low average range except for written language which is very low. His ability testing showed a score in the low average range" (Exhibit D-7).
- 7) The Respondent sent a notice of denial on September 11, 2025, advising that the Appellant's application for the IDDW Program had been denied as the documentation submitted for review did not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe either at present or during the developmental period (prior to the age of 22) (Exhibit D-2).

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 440.150(a)(2) *Intermediate Care Facility (ICF/IID) services* provides that *ICF/IID services* means those items and services furnished 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 or adaptive behavior **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 *Medical, psychological, and social evaluations:*

- (a) Before admission to an ICF or before authorization for payment, an interdisciplinary team of health professionals must make a comprehensive medical and social evaluation and, where appropriate, a psychological evaluation of each applicant's or beneficiary's need for care in the ICF.
- (b) In an institution for Individuals with Intellectual Disabilities or persons with related conditions, the team must also make a psychological evaluation of need for care. The psychological evaluation must be made before admission or authorization of payment, but not more than three months before admission.
- (c) Each evaluation must include—
 - (1) Diagnoses;
 - (2) Summary of present medical, social, and where appropriate, developmental findings;
 - (3) Medical and social family history;
 - (4) Mental and physical functional capacity;
 - (5) Prognoses;
 - (6) Kinds of services needed;
 - (7) Evaluation by an agency worker of the resources available in the home, family and community; and
 - (8) A recommendation concerning—

- (i) Admission to the ICF; or
- (ii) Continued care in the ICF for individuals who apply for Medicaid while in the ICF.

Code of Federal Regulations 42 CFR § 456.372 Medicaid agency review of need for admission:

Medical and other professional personnel of the Medicaid agency or its designees must evaluate each applicant's or beneficiary'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 Intellectual and Developmental Disabilities Waiver (IDDW) 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 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.

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.

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 ID normative populations when intellectual disability 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

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active treatment, and a requirement of intermediate care facility for Individuals with Intellectual Disabilities (ICF/IID) level of care to receive services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

Federal regulations describe that a related condition that qualifies for this program is any condition 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 mentally retarded persons” that is manifested before the person reaches age 22. Federal regulations also state that the condition cannot be mental illness.

The Respondent denied the Appellant’s application because it found that the documentation submitted for review did not indicate an eligible diagnosis of Intellectual Disability or a related condition which is severe either at present or during the developmental period (prior to the age of 22). The Respondent also found that the need for an ICF level of care was not indicated based upon the documentation submitted for review. The Respondent must show, by a preponderance of the evidence, that it correctly denied the Appellant’s application.

An Independent Psychological Evaluation (IPE) was completed for the Appellant in conjunction with his IDDW application on July 14, 2025. The Appellant’s initial IDDW Program application was denied on August 6, 2025. The denial letter advised the Appellant that he had the right to a second psychological evaluation. A second IPE was conducted on September 8, 2025. During the second IPE, the Appellant was administered the Weschler Abbreviated Scale of Intelligence Scale – II and the Wide Range Achievement Test – 5. The Appellant’s medical and educational history were considered, including psychological evaluations and achievement testing from when he was between 14 and 16 years old.

The Appellant’s intellectual functioning, prior to the age of 22, was documented in reports and evaluations from [REDACTED] Schools and [REDACTED] Schools. The Respondent’s representative, Charley Bowen (hereinafter Mr. Bowen), testified that a [REDACTED] Schools

Individualized Education Program completed for the Appellant when he was 15 years old indicated that his intelligence was in the low average range.

A Psychological Report completed by a clinical psychologist for [REDACTED] Schools on May 9, 1997, when the Appellant was 16 years old, included a Wechsler Intelligence Scale for Children – Third Edition. Scores on this test included a verbal intelligence quotient (IQ) of 87, performance IQ of 75, and full-scale IQ of 79. The test results stated that the Classification was “Borderline.” [REDACTED] testified that IQ scores of 69 or lower would be considered as indicating an Intellectual Disability. The psychologist completing the evaluation in 1997 indicated that results were “felt to be a low estimate of [the Appellant’s] true intellectual potential due to his less than optimal effort and motivation to do well, plus his tendency to give up easily.” These reports and evaluations do not include a diagnosis of Intellectual Disability or related severe and chronic disability.

The second IPE, conducted on September 8, 2025, indicated that the Appellant’s current IQ is less than 55, which would be more than three standard deviations below the mean. Mr. Bowen testified that these scores would seem to indicate that the Appellant has a moderate Intellectual Disability. However, he testified that intelligence is crystallized around ages 7-9, and a decline in IQ could be due to other factors such as mental illness, drug use, or a severe head injury. He stated that the psychologist who completed the September IPE reported that the Appellant’s scores were significantly below past IQ scores which were in the borderline range, and it is likely that the acute psychiatric symptoms have adversely affected his intellectual performance. It was the psychologist’s opinion that the results are likely an underestimate of the Appellant’s intellectual functioning. Mr. Bowen testified that it appears that the Appellant’s IQ scores have declined over his life, but the reasons for the current ability are likely related to psychiatric symptoms and not Intellectual Disability. During the current IPE, the Appellant was older than 22 years of age.

In the second IPE, the Appellant was diagnosed with bipolar II disorder. This was based on reports of recurrent episodes of hypomania characterized by decreased need for sleep, pressured speech, flight of ideas, etc., and recurrent episodes of major depressive disorder, characterized by anhedonia, insomnia, low self-esteem, poor concentration/indecisiveness, and recurrent thoughts of death/suicidal ideation. Mr. Bowen testified that the [REDACTED] Schools Individualized Education Program completed for the Appellant on April 24, 1996, when he was 15 years old, indicated that the Appellant had “severe behavior problems.” A Psychological Report completed by a clinical psychologist for [REDACTED] Schools on May 9, 1997, when the Appellant was 16 years old, indicated that he was hospitalized at [REDACTED] Hospital from October 20, 1995 to November 1, 1995, where he was diagnosed with a Major Depression, Single Episode and Attention Deficit Hyperactivity Disorder mixed with oppositional traits. Federal regulations exclude mental illness conditions from being considered as related conditions that qualify for the IDDW Program.

The Appellant was represented by his wife, [REDACTED] testified that when the Appellant was 22 or 23, he went through the windshield of a vehicle in a head on collision and had a head injury. She testified that the intelligence tests in 1996 and 1997 were conducted before the head trauma and that the Appellant’s IQ has declined over the years. Mr. Bowen testified that, because the head trauma from the car accident was after the Appellant reached the age of 22, it was after the developmental period and does not qualify as a severe related

condition for the IDWW Program.

██████ also testified that the Appellant had brain injuries while in juvenile detention, which was before he was 22. However, Mr. Bowen testified that these injuries did not result in a diagnosis of Intellectual Disability before the Appellant turned 22. In addition, Mr. Bowen testified that the Appellant did not have substantial deficits in at least three of the six identified major life areas because he had children, obtained his GED, has a history of skilled labor with a plumbers and pipefitters union, is capable of grooming and hygiene, can adequately express his wants and needs verbally, and has no difficulties with mobility. The Respondent did not find that the Appellant had any qualifying substantial deficits in functional areas.

██████ asked the Respondent if the fact that the Appellant is on social security disability for his brain injuries is a factor in the determination. Mr. Bowen stated that this was considered. ██████ testified that the Appellant struggles to function in daily life, that he needs help every day and cannot live alone. She testified that he needs caregiving every day and cannot make decisions on his own. However, individuals must require the level of care and services provided in an ICF/IID. Although the Appellant does seem to require care, he does not require the level of care provided for individuals who meet medical eligibility for the IDWW program.

Policy requires the presence of a diagnosis of an Intellectual Disability or a severe related condition to be medically eligible for the IDWW Program. The documentation provided failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or related condition, which is severe, before the age of 22. Whereas the Appellant did not meet the diagnostic criteria for the IDWW 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 diagnostic criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The evidence failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or related condition, which is severe, which manifested prior to the age of 22.
- 3) The evidence failed to establish that the Appellant requires an ICF level of care.
- 3) The Appellant does not meet the diagnostic criteria for services under the IDWW 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 IDDW Program.

ENTERED this 21st day of October 2025.

**Amy Hayes
State Hearing Officer**