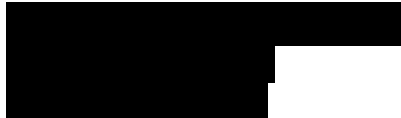




October 28, 2025



RE: [REDACTED] A JUVENILE v. DoHS/BMS
ACTION NO.: 25-BOR-3014

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,

Kristi Logan
Certified 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**

■ A JUVENILE,

Appellant,

v.

Action Number: 25-BOR-3014

**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 October 22, 2025.

The matter before the Hearing Officer arises from the July 31, 2025, decision by the Respondent to deny medical eligibility for services through the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her mother, ■. 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 July 31, 2025
- D-3 Independent Psychological Evaluation dated July 18, 2025
- D-4 Confidential Psychoeducation Evaluation Report dated April 23, 2025
- D-5 Confidential Educational Evaluation Report dated April 7, 2025
- D-6 Student Observation Form dated April 7, 2025
- D-7 Interview with Classroom Teacher dated April 7, 2025
- D-8 Parent/Caregiver Interview dated April 7, 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 services through the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant in conjunction with the I/DD Waiver application on July 18, 2025 (Exhibit D-3).
- 3) The Appellant was diagnosed with Cerebral Palsy and Global Developmental Delay (Exhibit D-3).
- 5) The Appellant was found to exhibit a substantial adaptive deficit in the area of *self-care* (Exhibits D-2 and D-3).
- 6) The Respondent sent a notice to the Appellant on July 31, 2025, advising that her application had been denied as the documentation submitted for review did not indicate an eligible diagnosis of Intellectual Disability or related condition which is severe. Additionally, the documentation failed to demonstrate at least three substantial adaptive deficits in the six major life areas (Exhibit D-2).

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 support. 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

Pursuant to policy and federal regulations, 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 ICF/IID level of care to receive services under the I/DD Waiver Program.

The Respondent denied the Appellant's application for the I/DD Waiver Program as the documentation failed to establish a diagnosis of an Intellectual Disability, or a related condition that is severe. Additionally, the documentation supported the presence of only one substantial adaptive deficit.

Kerri Linton, witness for the Respondent, testified that although Cerebral Palsy is a potentially eligible related condition, the documentation submitted failed to establish that her condition meets the severity criteria. Ms. Linton stated that an eligible related condition must be severe and the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, requiring services similar to those for persons with Intellectual Disability. At present, Ms. Linton contended that the Appellant's abilities do not support that her Cerebral Palsy is severe and impairs her intellectual or adaptive behavior abilities. Ms. Linton noted that Global Developmental Delay is not an eligible related condition as the diagnosis is only given to children ages 1-5, and related conditions must be chronic and life-long.

The Respondent found that the Appellant was demonstrating a substantial adaptive deficit in the

major life area of *self-care*. However, Ms. Linton stated that the documentation submitted failed to establish the presence of at least two additional adaptive deficits in the six major life areas.

The Appellant was administered the Adaptive Behavior Assessment Scale (ABAS) during the July 2025 IPE. Eligible scores of at least three standard deviations below the mean, or average, include scores of 1 or 2 in the areas tested. The Appellant received eligible scores in the areas of *self-care*, functional pre-academics (*learning*), *home living*, and *health and safety*. *Home living* and *health and safety* are subdomains comprising the major life area of *capacity for independent living*. At least three subdomains of *capacity for independent living* must be substantially limited to receive a deficit in this major life area.

Ms. Linton testified that although the Appellant received an eligible score in *learning* on the ABAS, the Appellant underwent testing for academic achievement in April 2025, which is more indicative of her ability to learn. The ABAS test is based upon answers provided by a third-party whereas the Appellant provided the answers to the Woodcock-Johnson Test of Achievement. Ms. Linton stated eligible scores of at least three standard deviations below the mean for the Woodcock-Johnson test are scores of 55 or below. The Appellant's scores ranged from 80-87 in the areas tested.

Ms. Linton stated deficits could not be awarded in the areas of *mobility* or *receptive/expressive language* based on the narrative descriptions of the Appellant's abilities. Ms. Linton stated that the Appellant is able to communicate through an electronic device to express her wants and needs. Ms. Linton testified that although the Appellant has mobility issues related to Cerebral Palsy, the Appellant can ambulate and referenced an interview with the Appellant's teacher who documented the Appellant's elopement issues, describing her as very fast moving when attempting to leave the classroom.

██████████, the Appellant's mother, testified that mobility is difficult for her daughter and she requires supervision while walking. ██████████ stated the Appellant requires assistance navigating stairs and although she is not wheelchair bound, ██████████ felt the Appellant has a deficit in *mobility*. ██████████ testified that the Appellant has issues with self-harm and will bang her head if she is frustrated or unhappy. ██████████ stated the Appellant cannot be left unsupervised and she is now homeschooled due to safety concerns at public school. ██████████ contended that the Appellant met the medical eligibility criteria of the Social Security Administration, but their income is too high to receive SSI payments. Based on the totality of the Appellant's delays, ██████████ argued that the Appellant should qualify for the I/DD Waiver Program.

The documentation provided failed to establish that the Appellant had an eligible diagnosis of Intellectual Disability or related condition, which is severe, and failed to establish the presence of at least three deficits out of the six major life areas. Whereas the Appellant did not meet the diagnostic or functionality 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 diagnostic criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22 and the functionality criteria of at least three substantial adaptive deficits out of the six major life areas.
- 2) The documentation provided failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or related condition that meets the severity criteria as set forth in policy.
- 3) The Appellant was found to exhibit a substantial adaptive deficit in *self-care*.
- 4) No additional adaptive deficits were identified for the Appellant.
- 5) The Appellant does not meet the diagnostic or functionality 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 28th day of October 2025.

Kristi Logan
Certified State Hearing Officer