



December 30, 2025

[REDACTED]

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDoHS/BMS
ACTION NO.: 25-BOR-3304

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-3304

**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 December 17, 2025, upon a timely appeal filed on November 12, 2025.

The matter before the Hearing Officer arises from the October 22, 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 parents, █████. 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 October 22, 2025

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

D-4 Individualized Education Program (IEP)
[REDACTED] County schools
IEP Meeting date: March 21, 2025

D-5 Office visit notes, dated September 23, 2025

D-6 Office visit notes, dated August 20, 2025

D-7 Office visit notes, dated April 1, 2025

D-8 Office visit notes, dated February 20, 2025

D-9 Medical record excerpt

D-10 Medical record excerpt

D-11 Medical record excerpt

D-12 Medical record excerpt

D-13 Medical record excerpt

D-14 Office visit notes, dated May 24, 2024

D-15 Office visit notes, dated June 5, 2025

D-16 Office visit notes, dated June 5, 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 October 22, 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 for the IDD Waiver program of either Intellectual Disability or a Related Condition which is severe."
- 6) A psychological evaluation of the Appellant was conducted on September 24, 2025. (Exhibit D-3)
- 7) The Appellant was given three diagnoses by the evaluating psychologist (Exhibit D-3): *Global Developmental Delay*; *Monoallelic mutation of CAMTA1 gene, by history*; and, *Hypotonic cerebral palsy, by history*.
- 8) A diagnosis of *Global Developmental Delay* is not an eligible diagnosis for the I/DD Waiver Program.
- 9) A diagnosis of *Global Developmental Delay* is offered for a limited time during early childhood development.
- 10) A diagnosis of *Hypotonic cerebral palsy* is a potentially eligible diagnosis for the I/DD Waiver Program, if severe and chronic in nature.
- 11) Mobility is the primary factor determining the severity of a *Hypotonic cerebral palsy* diagnosis.
- 12) A diagnosis of *Hypotonic cerebral palsy* may be established as a severe related condition when an individual is wheelchair-dependent and unable to propel or transfer independently.
- 13) A physical therapy evaluation of the Appellant was completed on February 20, 2025. (Exhibit D-12)
- 14) The Gross Motor Function Classification Scale Level (GMFCS) is a five-level classification system that describes the gross motor function of children and youth with cerebral palsy on the basis of their self-initiated movement with particular emphasis on sitting, walking, and wheeled mobility. (Exhibit D-12)

- 15) During his February 2025 physical therapy evaluation, the Appellant was classified as GMFCS Level I, which is described as “walks without limitations.” (Exhibit D-12)
- 16) A note accompanying the GMFCS remarks in the physical therapy report (Exhibit D-12) reads, in part, “The GMFM-66 was not administered today due to it being completed on 8/19/24. He remains classified as GMFCS level I.”
- 17) The discussion notes included in the Appellant’s physical therapy report (Exhibit D-12) read, in part, “[Appellant] moves around his home and community environments by ambulating independently. He does use a manual wheelchair with assist for longer distances and safety when in stores. He completes all functional transfers independently...”
- 18) A diagnosis of *Monoallelic mutation of CAMTA1 gene* is not independently an eligible diagnosis for the I/DD Waiver Program.
- 19) *Monoallelic mutation of CAMTA1 gene* may accompany intellectual disability.
- 20) The Appellant was not diagnosed with intellectual disability.
- 21) The Appellant’s parents explained that the Appellant has issues with toileting and the use of his assistive speech device.
- 22) The Appellant’s parents testified that the Appellant walks on his own but falls.
- 23) The Appellant has difficulty using or navigating the use of his assistive speech device.
- 24) The Appellant’s father testified that the Appellant uses approximately 15 words his parents can understand.
- 25) The Appellant’s mother testified that the Appellant’s word usage is “90% unclear.”
- 26) The Appellant’s mother testified that the Appellant requires one-on-one supervision at school and daycare.

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 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

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's application was denied for an unmet diagnostic component.

The Appellant was assessed by a psychologist and was given three diagnoses. The first, *Global Developmental Delay*, is not an eligible diagnosis for the I/DD Waiver Program. Program policy requires related condition diagnoses to be "severe and chronic in nature" and "likely to continue indefinitely." The expert witness for the Department testified that *Global Developmental Delay* is a diagnosis offered exclusively in early childhood development and is, therefore, not likely to continue indefinitely.

The Appellant's second diagnosis, *Hypotonic cerebral palsy*, is a diagnosis that may qualify as a related condition if it is severe. Severity is determined by dependence on the use of a wheelchair, and an inability to propel the wheelchair or transfer independently. Notes from a recent physical therapy evaluation (Exhibit D-12) indicated the Appellant did not meet any of the severity criteria. Although the Appellant's parents noted the Appellant has difficulty walking without falling, he is not fully dependent on the use of a wheelchair. The Appellant uses a manual wheelchair and there was no testimony or evidence offered to show he was unable to propel his wheelchair. The physical therapy report (Exhibit D-12) also noted the Appellant "completes all functional transfers independently." The Appellant's diagnosis of *Hypotonic cerebral palsy* is not accompanied by conditions meeting any of the severity criteria necessary for a "severe and chronic" related condition diagnosis.

The Appellant's third diagnosis, *Monoallelic mutation of CAMTA1 gene*, may accompany a diagnosis of intellectual disability in some cases, but does not represent an eligible diagnosis without an accompanying diagnosis of intellectual disability.

Without a diagnosis of intellectual disability or a severe and chronic related condition, the Appellant did not meet the diagnostic component of medical eligibility for the I/DD Waiver Program. The Respondent's decision to deny the Appellant's application for participation in the I/DD Waiver Program on this basis is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant's diagnosis of *Global Developmental Delay* is not "likely to continue indefinitely," it is not an eligible related condition diagnosis for purposes of the I/DD Waiver Program.

- 2) Because the Appellant's diagnosis of *Hypotonic cerebral palsy* is not accompanied by the mobility and transfer limitations needed to establish severity, it is not an eligible related condition diagnosis for purposes of the I/DD Waiver Program.
- 3) Because the Appellant's diagnosis of a *Monoallelic mutation of CAMTA1 gene* is not accompanied by a separate diagnosis of intellectual disability it is not an eligible diagnosis for purposes of the I/DD Waiver Program.
- 4) Because the Appellant did not have a diagnosis of intellectual disability or a severe related condition diagnosis, he did not meet the diagnostic component of medical eligibility for the I/DD Waiver Program.
- 5) 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 December 2025.

Todd Thornton
State Hearing Officer