



December 17, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS/BMS  
ACTION NO.: 25-BOR-3329

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 (DoHS). 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, BMS  
Kerri Linton, Psychological Consultation and Assessment  
Janice Brown, Acentra

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

[REDACTED],

**Appellant,**

v.

**Action Number: 25-BOR-3329**

**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 [REDACTED]. 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 10, 2025.

The matter before the Hearing Officer arises from the Respondent's decision on August 26, 2025, to deny the Appellant medical eligibility for the West Virginia Medicaid Intellectual/Developmental Disabilities (I/DD) 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, [REDACTED]. All witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Exhibit List  
Bureau for Medical Services (BMS) Chapter 513 excerpts
- D-2 DoHS Notice, dated August 26, 2025
- D-3 [REDACTED] Independent Psychological Evaluation (IPE)
- D-4 [REDACTED] letter, by [REDACTED] MD, February 2025
- D-5 [REDACTED] letter, by [REDACTED] MD, May 2025
- D-6 Individual Plan for Employment
- D-7 WV Department of [REDACTED] [REDACTED] Progress Report
- D-8 Individualized Education Program, meeting date May 6, 2025
- D-9 IEP Cover Sheet

D-10 Reevaluation Determination Plan  
D-11 Personalized Education Plan  
D-12 Progress Report IEP Goals and Objectives  
D-13 Extended School Year Data Collection Form  
D-14 Schoology Records  
D-15 [REDACTED] letter, by [REDACTED] MD, FA, AP, dated February 3, 2011  
D-16 Report of MRI Consultation, dated February 18, 2008  
D-17 [REDACTED] ECG records  
D-18 [REDACTED] Office Visit records  
D-19 [REDACTED] Ultrasound Thyroid records  
D-20 [REDACTED] Lipid Panel collection results  
D-21 [REDACTED] Office Visit notes  
D-22 Social Security Administration Supplemental Security Income *Notice of Award*  
D-23 IPE, completed March 20, 2025  
D-24 DoHS Notice, dated April 28, 2025  
D-25 [REDACTED] Progress Notes  
D-26 Eligibility Committee Report, [REDACTED] County Schools, dated February 29, 2016  
D-27 Psycho-Educational Evaluation, dated February 20, 2016  
D-28 Speech/Language Impairment Team Report, dated February 29, 2016  
D-29 Adapted Physical Education Evaluation Carson Assessment of Motor Patterns, dated October 4, 2013  
D-30 Occupational Therapy Initial Plan of Care, dated September 2013  
D-31 Psychological Assessment Report, dated September 2013  
D-32 Table of Scores  
D-33 [REDACTED] County Schools Classroom Teacher Evaluation  
D-34 Parent Information Form for Special Education  
D-35 Diagnostic and Statistical Manual excerpt

**Appellant's Exhibits:**

A-1 [REDACTED] letter, by [REDACTED] MD, dated November 10, 2025  
Social Security Administration Disability Determination Explanation  
Confidential Psychological Evaluation, dated October 16, 2025  
Score sheets

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 April 28, 2025, the Respondent issued a notice advising the Appellant he was ineligible for the WV Medicaid I/DD Waiver program because the submitted documentation did not establish an eligible diagnosis. The Appellant chose to obtain a second medical evaluation (Exhibit D-24).

- 2) On August 26, 2025, the Respondent issued a notice advising the Appellant he was ineligible for the WV Medicaid I/DD Waiver program because the submitted documentation did not establish the presence of an Intellectual Disability or a Related Condition which is severe. Specifically, the notice provided that “Other Specified Neurodevelopmental Disorder” does not meet the policy definition of a severe related condition (Exhibit D-2).
- 3) On August 13, 2025, [REDACTED] PhD (hereafter Dr. [REDACTED]) completed an IPE with the Appellant (Exhibit D-3).
- 4) The Appellant was 18 years old at the time of the IPE with Dr. [REDACTED] (Exhibit D-3).
- 5) Dr. [REDACTED] reviewed the Appellant’s records (Exhibit D-3), including:
  - [REDACTED] Progress Notes
  - Individual Plan for Employment
  - Letter from [REDACTED] MD
  - WV DoHS I/DD Waiver Records
  - IPE, dated March 2025
  - Records from Social Security Administration
  - Individualized Education Program (IEP) and School Records for 2013, 2015, 2024, and 2025
  - Medical Records from 2008-2025
  - Occupational Therapy Records
  - Psychological and Psychoeducational reports
  - Information from [REDACTED]
- 6) Dr. [REDACTED] completed psychological testing with the Appellant (Exhibit D-3), including:
  - Adaptive Behavior Assessment System, 3<sup>rd</sup> Edition (ABAS-3)
  - Bender Gestalt Test of Visual Motor Integration
  - Peabody Picture Vocabulary Test (PPVT-5)
  - Wechsler Adult Intelligence Scale, Fifth Edition (WAIS-5)
  - Wide Range Achievement Test, Revision 5 (WRAT-5)
- 7) Under *Summary and Recommendations*, Dr. [REDACTED] noted, “Across informant-report measures, cognitive testing, behavioral observations, and the interview, [REDACTED] mother’s responses were inconsistent for [REDACTED] self-care skills on the ABAS-3” (Exhibit D-3).
- 8) Under *Summary and Recommendations*, Dr. [REDACTED] noted that the Appellant’s overall cognitive functioning was within the average range.
- 9) Dr. [REDACTED] believed the results of her evaluation were considered valid and diagnosed the Appellant with Other Specified Neurodevelopmental Disorder (Dysgenesis of the Corpus Collosum & Processing Speed), Unspecified Communication Disorder, and Other Congenital Malformations of the Brain (Dysgenesis of Corpus Collosum) (Exhibit D-3).

- 10) In January 2025, the Social Security Administration (SSA) determined the Appellant was disabled due to “speech issues, hypoplasia in the brain, congenital kyphosis, spine out of alignment, pectus carinatum chest wall deformity causing breathing issues, heart races” (Exhibits D-22 and A-1).
- 11) In February 2025, [REDACTED] reflected the following diagnoses for the Appellant: Pectus Carinatum, a chest wall deformity; Gross Developmental Delay, resulting in difficulties with daily living tasks and social interactions; Ptosis of Eyelid, a drooping eyelid; Delayed Verbal Communication and Slow Processing Speeds, impacting social integration and the ability to engage in educational or work activities; Dysgenesis of Corpus Collosum, resulting in difficulties with coordination, learning, and communication; and Congenital Kyphosis, resulting in abnormal curvature of the spine (Exhibit D-4).
- 12) On March 20, 2025, [REDACTED] MA, (hereafter [REDACTED]) a licensed psychologist, completed an IPE with the Appellant (Exhibit D-23).
- 13) [REDACTED] reviewed a February 2016 Psycho-Educational Evaluation; September 2013 Psychological Assessment; and Results of a Wechsler Nonverbal Scale of Ability (Exhibit D-23).
- 14) [REDACTED] administered the Test of Nonverbal Intelligence - Fourth Edition (TONI-4); ABAS-3; and WRAT5 (Exhibit D-23).
- 15) [REDACTED] diagnosed the Appellant with Other Neurodevelopmental Disorder due to Dysgenesis of the Corpus Collosum; Selective Mutism; and Dysgenesis of Corpus Collosum (Exhibit D-23).
- 16) In May 2025, [REDACTED] reflected the following diagnoses for the Appellant: Global Developmental Delay, Dysgenesis of the Corpus Collosum, and Congenital Kyphosis (Exhibit D-5).
- 17) The Appellant qualified for academic instruction under an Individual Education Program (IEP) due to Other Health Impaired (OHI) (Exhibits D-8, D-10, D-26).
- 18) On June 3, 2025, Social Security Administration records note:  
299.00 Autism Spectrum Disorder, level 3 315.2 Specified Learning Disorder with impairment in written expression 315.1 Specific Learning Disorder with impairment in mathematics 312.23 Selective Mutism hypoplasia in the brain, congenital kyphosis, spine out of alignment, pectus carinatum chest (Exhibit A-1).
- 19) The Social Security Administration record displayed redacted signatures of the diagnosing clinician (Exhibit A-1).
- 20) On February 20, 2016, School Psychologist [REDACTED] (hereafter [REDACTED]) completed a Psycho-Educational Evaluation with the Appellant (Exhibit D-27).

- 21) [REDACTED] reviewed the Appellant's academic records and administered tests, including the WISC-Fifth Edition, Behavior Assessment System for Children - Second Edition (BASC-2), and ABAS-2 (Exhibit D-27).
- 22) [REDACTED] concluded that the results indicated the Appellant had borderline intellectual functioning (Exhibit D-27).
- 23) [REDACTED] did not identify a diagnosis of Intellectual/Developmental Disability or other severe related diagnosis (Exhibit D-27).
- 24) In September 2013, [REDACTED] M.S., Ed.S., NCSP (hereafter [REDACTED]) conducted a Psychological Assessment with the Appellant (Exhibit D-31).
- 25) [REDACTED] conducted testing, including a Wechsler Nonverbal Scale of Ability; Woodcock Johnson Tests of Achievement: Third Edition (WJ-III); Hawthorne Adaptive Behavior Scales: Revised Second Edition; and Conner's Behavior Rating Scale (Exhibit D-31).
- 26) [REDACTED] did not identify a diagnosis of Intellectual/Developmental Disability or other severe related diagnosis (Exhibit D-31).
- 27) In October 2013, the Appellant's diagnoses included Dysgenesis of Corpus Callosum; Ptosis of eyelid; and Global Developmental Delay (Exhibit D-25).
- 28) In February 2011, the Appellant's diagnoses included: Developmental Delay, Speech Delay, Heart Abnormality of SVT, Dysmorphic features of the face, Sensory Deficit, Hypospadias, Thrombocytosis, Umbilical Hernia, Thoracic Kyphosis, and Dysgenesis of the Corpus Callosum (Exhibit D-15).
- 29) The Appellant has cognitive limitations that impact his reasoning, problem-solving, memory, and adaptive functioning skills, making it difficult for him to manage his personal, financial, and health-related responsibilities without constant support (Exhibit A-1).
- 30) The Appellant requires ongoing care, supervision, and assistance to ensure his safety, wellbeing, and quality of life (Exhibit A-1).
- 31) The Appellant requires support from an adult when doing any school related work (Exhibit A-1).

#### **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 WV 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 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 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 WV 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, supervision, and prompting and should therefore, be found eligible for the WV 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.

As the evidence revealed that the submitted IPE was reliable, the Board of Review must consider the IPE diagnosis when determining the Appellant's eligibility for the Medicaid I/DD Waiver program. 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.

Assessments conducted after the Respondent's August 2025 decision could not be considered when the Respondent determined the Appellant's WV I/DD Waiver program eligibility and therefore were not considered in this decision.

### **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.

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 Intellectual Disability or a related severe condition.

The Social Security Administration records refer to a June 3, 2025 diagnostic impression of Autism Spectrum Disorder, Level 3, which is an eligible diagnosis. The submitted documentation revealed redacted signatures for the diagnosing clinician. According to the federal regulations, a psychological evaluation, not older than three months, is required to establish eligibility. The agency policy stipulates that eligibility is determined through a review of an Independent Psychological Evaluation (IPE) completed by a member of the Independent Psychologist Network (IPN) and includes assessments that support the diagnostic considerations offered. As the SSA diagnostic impression did not satisfy these criteria, the diagnosis could not be relied upon to establish WV I/DD Waiver program eligibility. Further, the submitted records did not corroborate the presence of a severe Autism diagnosis.

During the hearing the Respondent explained that the Appellant's diagnosis of Other Specified Neurodevelopmental Disorder due to Dysgenesis of the Corpus Colosum, did not constitute an eligible condition which is severe. The evidence revealed that's cognitive functioning tested within the average and borderline ranges, which is inconsistent with severe intellectual disability. Pursuant to the submitted records, the Appellant received special education services related to his diagnosis but graduated with a regular diploma, which is inconsistent with individuals who possess severe intellectual disability. The Appellant's representative testified that the Appellant required constant supervision and could not work or live independently. During the hearing, the

Respondent's representative testified that individuals with severe intellectual disability would be unable to work at all.

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 Appellant presents with functioning barriers, the Appellant's limitations are attributable to a non-qualifying diagnosis. The policy requires a severe related condition like severe I/DD; however, the evidence revealed the Appellant's overall cognitive functioning was within the average range.

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 WV 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) The Respondent proved by a preponderance of evidence that the submitted documentation did not verify the presence of an eligible diagnosis manifested during the Appellant's developmental period.
- 3) 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 WV Medicaid I/DD Waiver.

### **DECISION**

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

**ENTERED this 17<sup>th</sup> day of December 2025.**

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**Tara B. Thompson, MLS**  
**Certified State Hearing Officer**