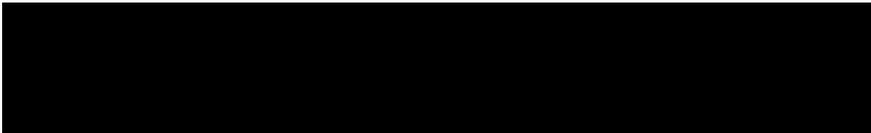




January 21, 2026



RE: ██████████ A PROTECTED PERSON v. WV DoHS/BMS
ACTION NO.: 25-BOR-3245

Dear ██████████

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: WV DoHS/BMS, PC&A, ACENTRA

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

■ A PROTECTED PERSON,

Appellant,

v.

Action Number: 25-BOR-3245

**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 PERSON. 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 originally scheduled to convene on December 3, 2025, but upon a timely request from the Appellant it was continued to January 7, 2026.

The matter before the Hearing Officer arises from the October 9, 2025 decision by the Respondent to deny I/DD Waiver program services.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist with PC&A. In attendance, but not participating, was Crystal Dodson, Project Manager with PC&A. The Appellant was represented by his parents, ■ All 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 -513.6.4
- D-2 Second Medical Denial Notice, dated October 9, 2025
- D-3 Second Medical Independent Psychological Evaluation, evaluation date September 15, 2025
- D-4 Independent Psychological Evaluation, evaluation date July 24, 2025
- D-5 Denial Notice, dated July 30, 2025
- D-6 Forensic Evaluation Competency Assessment, dated June 24, 2025
- D-7 ■ Medical Referral and Treatment Form, dated September 14, 2024
- D-8 ■ Incident Reports, dated June 19 and July 30, 2025
- D-9 ■ County Schools IEP Snapshot, meeting date November 3, 2023

- D-10 In the Circuit Court of ██████████ West Virginia, Agreed Modification of Disposition Order, dated March 27, 2024
- D-11 Office of Special Education Psychoeducational Report, dated October 9, 2023
- D-12 Psychological Evaluation, evaluation date January 11, 2024

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 is a 14-year-old who applied for the I/DD Waiver program.
- 2) As part of the I/DD Waiver program application process, the Appellant was evaluated in an Independent Psychological Evaluation (IPE) conducted on July 24, 2025, by ██████████ ██████████ PhD, ABPP. (Exhibit D-4)
- 3) Dr. ██████████ administered the following tests during the July 2025 IPE:
 - WISC-5 (intellectual/cognitive test) resulted in an IQ score of 66 indicating borderline intellectual functioning.
 - ABAS-3 (adaptive behavior test) completed by Dr. ██████████ the Appellant, and his mother. Dr. ██████████ summarized that functional academics and self-care are consistent with his intellectual ability. However, Dr. ██████████ noted that some scores are artificially lower because the Appellant does not have the opportunity to perform the tasks although capable of performing those actions.
 - Woodcock-Johnson IV Tests (achievement test) which showed very low to low range, especially in mathematics.
 - Social Communication Questionnaire (Autism screening), completed by the Appellant's mother, indicated further evaluation of ASD, but did not provide clear evidence of ASD. (Exhibit D-4)
- 4) Dr. ██████████ diagnosed the Appellant as having: Borderline Intellectual Functioning; Attention Deficit/Hyperactivity Disorder (by history); Specific Learning Disability with impairment in mathematics; Conduct Disorder, childhood onset; Rule Out Autism Spectrum Disorder (Level 1 to Level 2). (Exhibit D-4)
- 5) On July 30, 2025, the Appellant's I/DD Waiver program application was denied stating that the "Documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe. Documentation submitted for review does not indicate the need for an ICF level of care." (Exhibit D-5)

- 6) The Appellant exercised his right to a second medical evaluation.
- 7) On September 15, 2025, the Appellant underwent a second medical evaluation conducted by [REDACTED] M.A. (Exhibit D-3)
- 8) Ms. [REDACTED] reviewed the Appellant's previous tests and other reports, and administered the following tests on the September 2025 IPE:
 - ABAS-3 (adaptive behavior test), completed by the Appellant's father, resulting in no eligible scores.
 - Gilliam Autism Rating Scale 3rd Edition (GARS-3), completed by the Appellant's father, showed that the Appellant may meet ASD, Level 1. (Exhibit D-3)
- 9) Ms. [REDACTED] diagnosed the Appellant as having: Major Depressive Disorder, Recurrent, Severe, with Anxious Distress; Conduct Disorder; Attention Deficit Hyperactivity Disorder, Combined Presentation, by history; Specific Learning Disability with Impairment in Mathematics, by history; Parent-Child Relational Problem; Borderline Intellectual Functioning; Diffused Traumatic Brain Injury with Loss of Consciousness; Rule Out Autism Spectrum Disorder; Migraine; Polycystic Kidney; Central Sleep Apnea and Conditions Classified Elsewhere; Arnold-Chiari Syndrome. (Exhibit D-3)
- 10) A second medical notice of denial was issued on October 9, 2025, citing that the "Documentation submitted for review does not indicate an eligible diagnosis for the IDD Waiver program. Documentation submitted for review does not indicate the need for an ICF level of care. Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas: *Self-Care; Learning; Self-Direction; Receptive or Expressive Language; Mobility; Capacity for Independent Living*" (Exhibit D-2)
- 11) The Appellant underwent a Psychological Evaluation for the Children with Serious Emotional Disorders (CSED) Waiver Program on December 21, 2022, which resulted in a diagnosis of: ADHD, generalized anxiety disorder, disruptive mood dysregulation disorder, and conduct disorder, resulting in approval for in-home services. (Exhibits D-3, D-4, D-6, D-12)
- 12) The Appellant suffered a Traumatic Brain Injury (TBI) in May 2023.
- 13) The Appellant was admitted to [REDACTED] a psychiatric facility, in April 2024.
- 14) The Appellant underwent a court ordered forensic evaluation competency assessment in June 2025 by [REDACTED] PhD. (Exhibit D-6)
- 15) Dr. [REDACTED] administered:
 - Wechsler Abbreviated Scale of Intelligence, Second Edition (WASI-II) which resulted in a Full Scale IQ of 74, within the borderline range.

- Wide Range Achievement Test, Revision Five (WRAT-5) which resulted in no eligible test scores.
 - Cognitive Assessment Report (neurocognitive assessment due to TBI history), where Dr. █████ concluded that there were no concerns with severe neurocognitive functioning as the Appellant's test scores fell within the general range of each other.
 - Millon Adolescent Clinical Inventory, Second Edition (MACI-II) (emotional and behavioral adjustment, family interaction, and neuro-cognitive and attention-related academic functioning assessment) resulted in a negative score of 96th percentile.
 - Beck Youth Inventories (BYI-2) administered to assess depression, anxiety, anger, disruptive behavior, and self-concept.
 - Autism Spectrum Rating Scales (ASRS), rated by the Appellant's father, indicated elevated scores.
 - Childhood Autism Rating Scale, Second Edition, High Functioning (CARS2-HF) showed a score of 39.5, Dr. █████ did not observe the symptoms reported by the Appellant's father during the assessment. Therefore, Dr. █████ could not conclude that the Appellant has ASD, although he may have some autistic tendencies.
 - Juvenile Adjudicative Competence Interview (JACI). (Exhibit D-6)
- 16) Dr. █████ diagnosed the Appellant as having: Conduct Disorder; Major Depressive Disorder, Recurrent, Severe; Borderline Intellectual Functioning; Autistic tendencies but not enough to diagnose at this time. (Exhibit D-6)
 - 17) Dr. █████ concluded that the Appellant was not hindered by cognitive issues related to the TBI and that he was competent to participate in the juvenile hearing. (Exhibit D-6)
 - 18) The Appellant underwent a court ordered Psychological Evaluation administered by █████ M.S., on January 11, 2024. (Exhibit D-12)
 - 19) As part of the evaluation, █████ reviewed: Agreed Order for Pre-Adjudicatory Psychology Evaluation (12/21/23); Petition filed in the Circuit Court of █████ County, West Virginia sitting as a juvenile court (4/10/23); Records from █████ County Schools; █████ County Questionnaire for Incurable Petition; A Psychological Evaluation for Children with Serious Emotional Disorder Waiver (12/21/22); A Psychological Evaluation done for Social Security Disability (12/30/19); A Psychological Evaluation done for Social Security Disability (4/12/16). (Exhibit D-12)
 - 20) Mr. █████ diagnosed the Appellant has having: Attention-Deficit/Hyperactivity Disorder; Major Depressive Disorder; Generalized Anxiety Disorder; Oppositional Defiant Disorder; Borderline Intellectual Functioning; Traumatic Brain Injury. (Exhibit D-12)
 - 21) The Appellant has not been given a definitive diagnosis of Autism Spectrum Disorder (ASD). (Exhibits D-3, D-4, D-6, D-12)

APPLICABLE POLICY

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.

Bureau for Medical Services (BMS) Provider Manual §513.6.2, Initial Medical Eligibility:

To be medically eligible, the applicant must require a 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.

Bureau for Medical Services Provider Manual §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.

Bureau for Medical Services Provider Manual §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.

Bureau for Medical Services Provider Manual §513.6.2.3, *Active Treatment*

Documentation must support that 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 Respondent denied medical eligibility for the Appellant’s I/DD Waiver Program application because the submitted documentation did not establish the presence of an eligible diagnosis or a related condition which is severe, the necessity for ICF/IID level of care, or the presence of substantial adaptive deficits in three or more of the six major life areas identified for program eligibility. The Appellant appeals the Respondent’s denial.

Each eligibility criteria of Diagnosis, Functionality, Active Treatment, and ICF/IID Level of Care must be met in order to be eligible for the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services. 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 need the same level of care and services provided in an ICF/IID setting.

Psychological Consultation and Assessment (PC&A) is the Medical Eligibility Contracted Agent (MECA) who determines applicant eligibility for the I/DD Waiver Program for the Respondent. PC&A is required to determine the Appellant's eligibility through review of an Independent Psychological Evaluation (IPE) report(s). The MECA determines if the information provided aligns with the policy criteria for establishing I/DD Waiver eligibility.

Policy requires that an applicant has 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. Policy lists Autism and Traumatic Brain Injury as possible related conditions, in addition to any condition, other than mental illness, if it is severe and chronic. Additionally, intellectual disability or severe related condition with associated concurrent adaptive deficits must be likely to continue indefinitely and have the presence of at least three substantial deficits out of the six identified major life areas.

Charley Bowen, the Respondent's consulting psychologist from PC&A, explained that the Appellant's diagnosis of Borderline Intellectual Functionality does not qualify as an eligible diagnosis by itself. This diagnosis must be found to have concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. Mr. Bowen concluded the submitted documentation failed to show that the Appellant met the criteria established by policy for program eligibility.

Mr. Bowen examined the possibility of Autism as a related condition. Mr. Bowen testified that a diagnosis of ASD, level 3, meets the severity criteria for I/DD Waiver Program eligibility. However, the Appellant did not receive a diagnosis of Autism. Instead, the Appellant received a diagnosis of Rule Out Autism Spectrum Disorder, which is not considered to be an eligible related condition. Additionally, because the Appellant qualified and received CSED Waiver Program services, Mr. Bowen explained that would corroborate the Appellant's lack of an eligible I/DD Waiver Program diagnosis because the CSED program is unavailable for individuals with an I/DD Waiver level of Intellectual Disability or have a diagnosis of Autism Level 3.

Another potential related condition is the Appellant's diagnosis of Traumatic Brain Injury (TBI), which occurred in May 2023. However, Mr. Bowen testified that to qualify as a related condition, it must be severe and a significant change in the Appellant's abilities must be shown which is unrelated to mental illness. Mr. Bowen reviewed the court ordered June 2025 Competency Evaluation completed by Dr. [REDACTED]. Mr. Bowen specifically noted the Cognitive Assessment Battery wherein Dr. [REDACTED] concluded that the Appellant's responses were in the "average to low average range regarding neurocognitive functioning and commensurate with IQ scores. He [the Appellant] appears to be above his relative average for deductive, attention and planning. There are no concerns with neurocognitive functioning at this time to a severe level as all his scores fall within a general range of each other." Dr. [REDACTED] determined that the Appellant did not "seem to be hindered by cognitive issues related to TBI," and was competent to proceed in a juvenile proceeding. Mr. Bowen explained that those individuals who would meet the diagnosis criteria for program eligibility would not be found competent for court. Thus, Mr. Bowen did not find that the Appellant met the severity level for the related condition of TBI.

No substantial deficits were indicated in the narratives documented in the paperwork submitted with the application. The narratives showed that the Appellant is independent with self-care, can

communicate by spoken language, is mobile, can choose activities that he enjoys participating in such as playing video games and baseball. Mr. Bowen explained that those individuals who qualify for the I/DD Waiver Program are unable to participate in organized sports activities such as baseball.

The Appellant's father [REDACTED] testified that the Appellant was coached as to what to say and do, and how to react for the June 2025 Competency Evaluation and thus, believes the findings to be invalid. Mr. [REDACTED] stated that all of the IPEs show that the Appellant has significant problems. Mr. [REDACTED] states that the Appellant does good at self-care, needs reminders, and his mobility is okay, but believes that he does meet the eligibility criteria for learning and TBI. The Appellant's mother ([REDACTED]) acknowledged that the Appellant was not a "typical kid" prior to the TBI. The Appellant does have issues with his memory and temper issues. [REDACTED] stated that she believes his ADHD and ODD mask the diagnosis of autism.

The Board of Review cannot draw clinical conclusions regarding the Appellant's functional abilities and severity beyond what is identified by the IPEs and corroborated by the narratives and other submitted information for which the Respondent reviewed for the program application. The Hearing Officer can only decide whether the Respondent correctly denied the Appellant's eligibility based on the submitted documentation for the I/DD Waiver Program application.

The Respondent showed by a preponderance of evidence that it correctly concluded that the Appellant did not meet the medical eligibility criteria for program eligibility. The Respondent's decision to deny the Appellant's I/DD Waiver Program application is 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.
- 3) Because the submitted documentation failed to establish the presence of a qualifying diagnosis, the Respondent correctly denied the Appellant's eligibility 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 I/DD Waiver Program application.

ENTERED this 21st day of January 2026.

Lori Woodward, Certified State Hearing Officer