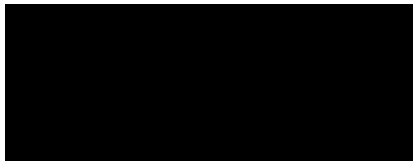




March 31, 2026



RE: ██████████ a Protected Individual, v. WV DoHS  
ACTION NO.: 25-BOR-3495

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 people 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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Terry McGee, BMS  
Kerri Linton, PC&A

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 25-BOR-3495**

**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 West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 25, 2026.

The matter before the Hearing Officer arises from the December 10, 2025, decision by the Respondent to deny the Appellant's application for benefits under the Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Program.

At the hearing, the Respondent appeared by Kristin Blanks, Psychologist/Long-Term Care Clinical Consultant, Bureau for Medical Services. The Appellant was represented by ■ Legal Aid of West Virginia. All witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Policy Chapter 511.2
- D-2 Notice of Decision dated December 10, 2025
- D-3 ICF/IID Level of Care Evaluation dated December 5, 2025
- D-4 Psychological Evaluation dated November 19-20, 2025
- D-5 Social Summary dated December 3, 2025

**Appellant's Exhibits:**

- A-1 Social Summary dated December 3, 2025 (amended)
- A-2 ICF/IID Level of Care Evaluation dated January 12, 2026
- A-3 Updated Forensic Psychological Evaluation (interview date December 15, 2025)

- A-4 Petition for the Appointment of a Guardian/Conservator dated January 6, 2026, and Evaluation Report of Licensed Physician/Psychologist dated January 5, 2026
- A-5 Affidavit of Physician dated January 21, 2026
- A-6 Order Continuing Remedial Treatment dated December 18, 2025

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 December 10, 2025, the Appellant, currently age 18, was notified that her application for placement in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) was denied because her condition does not meet required diagnostic criteria for the program (Exhibit D-2).
- 2) The December 10, 2025, notice states that the Appellant’s ICF/IID Medicaid application was denied because “Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/IID eligibility” (Exhibit D-2).
- 3) The Notice indicated that a substantial adaptive deficit was identified in the major life area of ***Learning***. However, substantial deficits were not identified in the major life areas of ***Self-Care, Self-Direction, Receptive or Expressive Language, Mobility, and Capacity for Independent Living*** (Exhibit D-2).
- 4) The Notice goes on to state: “The psychological evaluation does not provide specific diagnostic impressions. ‘Intellectual disability’ is mentioned; however, definitive diagnostic impressions were not made by the licensed psychologist. The psychological did not recommend an ICF/IID level of care. The documentation did not support the presence of substantial adaptive deficits in three or more of the six major life areas. Learning can be awarded given the test scores reported in the evaluation. Self-care had an eligible score but there was no narrative information regarding the applicant’s ability to carry out these tasks; therefore, this area cannot be awarded as there is no way to verify the eligible score of ‘1’ in that area. The applicant did not meet in self-direction, receptive or expressive language, mobility or capacity given the scores on the ABAS. The social history had an error recommending ICF/IID level of care as it was written about another individual. The social history was signed by a temporary licensed social worker which would require the signature of the supervising licensed social worker” (Exhibit D-2).
- 5) The Appellant underwent an ICF/IID Level of Care Evaluation (DD2-A) on December 5, 2025. The evaluation indicates that the Appellant is continent, is independent with personal hygiene/self-care, eats independently, is ambulatory, and communicates verbally. It provided an eligible diagnosis of mild intellectual disability and the physician certified that the Appellant requires an ICF/IID level of care (Exhibit D-3).

- 6) The Appellant was admitted to [REDACTED] on April 10, 2025, with referral behaviors of physical aggression, suicidal ideation, self-injurious behavior, and homicidal ideation (Exhibit D-4).
- 7) Between October 2025 and February 2025, the Appellant was in juvenile detention due to legal issues. She was then placed in a hotel with staff supervision until her admission to [REDACTED] (Exhibit D-4).
- 8) The Appellant received special education services for intellectual disability in the past, has a long history of behavioral issues in school, and has a history of inpatient, medication management, and outpatient services (Exhibit D-4).
- 9) The Appellant has diagnoses of Major Depressive Disorder (recurrent/moderate), history of Fetal Alcohol Syndrome, Intellectual Disability (moderate), attention deficit hyperactivity disorder (AD/HD), and Post-Traumatic Stress Disorder (Exhibit D-4).
- 10) The Appellant demonstrated a full-scale IQ score of 68 on the Wechsler Adult Intelligence Scale-Fifth Edition (WAIS-5) (Exhibit D-4).
- 11) An Adaptive Behavior Assessment System- Third Edition (ABAS-3) was administered during the November 2025 Psychological Evaluation. The Respondent considers scores of 1 and 2 as program-eligible scores for the ICF/IID Program. The Appellant received ineligible scores in the following domains: communication- score 5; functional academics- 7; self-direction- 3; social skills- 3; leisure skills- 4; home or school living- 5; community use- 3; and health and safety- 3. The only program-eligible score received by the Appellant on the ABAS-3 was in the domain of self-care (score of 1) (Exhibit D-4).
- 12) The Respondent awarded the Appellant a substantial adaptive deficit in the functional area of **Learning** based on her program-eligible score of 44 (less than 0.1 percentile) on the Wechsler Individual Achievement Test (WIAT-4) (Exhibit D-4).
- 13) The evaluator noted that while the Appellant has made some progress in residential treatment, she would benefit from continued interventions to address behavioral issues (Exhibit D-4).
- 14) The Appellant has never been gainfully employed (Exhibit D-5).
- 15) The Appellant can complete tasks of daily living if she has assistance and prompting (Exhibit D-5).
- 16) Under functional status, the Social History document contains an error since the temporary licensed social worker who completed the report recommended an ICF/IID level of care for a male client who was in a REM-operated intermediate care facility. As the information was incorrect, the recommendation was not accepted by the Respondent (Exhibit D-5).

- 17) An amended Social History provided by the Appellant's representative was signed by a licensed social worker and states that an ICF/IID level of care is recommended to meet the Appellant's needs. However, the amended document incorrectly states that the Appellant is in placement at a REM-operated intermediate care facility (Exhibit A-1).
- 18) An updated ICF/IID Level of Care Evaluation completed on January 12, 2026, includes a diagnosis of intellectual disability and certifies the need for an ICF/IID level of care (Exhibit A-2).
- 19) The Appellant is ambulatory and has normal coordination (except for unsteadiness on stairs), as well as normal gait, muscle tone, and reflexes. The Appellant completes personal hygiene and self-care tasks with prompting (Exhibit A-2).
- 20) An Updated Forensic Psychological Evaluation completed on December 15, 2025, lists a diagnosis of intellectual developmental disorder, moderate severity, and other specified neurodevelopmental disorder, as well as neurodevelopmental disorder associated with prenatal alcohol exposure (Exhibit A-3).
- 21) The Appellant has difficulty understanding the complexity of situations, has poor impulse control, and is prone to violent outbursts (Exhibit A-5).
- 22) The state of West Virginia filed a Petition for the Appointment of a Guardian/Conservator for the Appellant on January 5, 2026, and the Appellant is currently under the guardianship of Adult Protective Services (Exhibit A-4).

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations Chapter 511.2.3 state:

BMS, through the ICF/IID contracted agent, determines the medical eligibility for an applicant in the ICF/IID Program. To be eligible for ICF/IID placement, the applicant must meet the following criteria:

1. 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.
  - a. Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for ICF/IID placement 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 persons with an intellectual disability, and requires services similar to those required for persons with an intellectual disability.
- b. Additionally, the applicant who has the 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 below.
2. The applicant must have substantial adaptive deficits in three or more of the following six major life areas:
- Self-care,
  - Receptive and/or expressive language,
  - Learning (functional academics),
  - Mobility,
  - Self-direction,
  - Capacity for Independent Living, which includes the following six subdomains: home living, social skills, employment, health and safety, community use, and leisure activities.
  -

For the capacity for independent living major life area to be met, the applicant must be substantially delayed in at least three of the six sub-domains (home living, social skills, employment, health and safety, community use and leisure activities).

Substantial adaptive deficit is defined as scores on standardized measures of adaptive behavior that are three standard deviations below the mean or less than one percentile when derived from non-ID normative populations, or in the average range or below the 75<sup>th</sup> percentile when derived from ID normative populations.

The presence of substantial deficits must be supported by the additional documentation submitted for review (e.g., Individual Education Program (IEP), Occupational Therapy (OT) evaluations, narrative descriptions, etc.)

Substantial deficits must be documented through both the narrative documents and the standardized measures of adaptive behavior.



While the Appellant clearly faces many challenges, the Respondent acted correctly in denying the Appellant's ICF/IID Medicaid application as the documentation provided for review does not confirm the presence of three substantial adaptive deficits.

### **CONCLUSIONS OF LAW**

- 1) To qualify for ICF/IID Medicaid benefits, an individual must meet the diagnostic, functionality, severity, and need for active treatment/services criteria.
- 2) Documentation submitted for review does not confirm the presence of substantial adaptive deficits in three of the six major life areas identified for ICF/IID eligibility.
- 3) The Respondent's decision to deny ICF/IID Medicaid benefits based on failure to meet program criteria is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny the Appellant's ICF/IID Medicaid application.

**ENTERED this 31st day of March 2026.**

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**Pamela L. Hinzman  
State Hearing Officer**