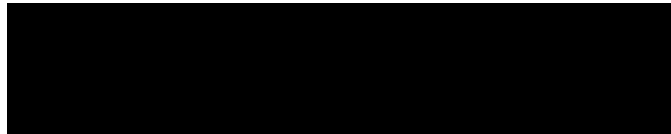




March 11, 2026



RE: [REDACTED] v. WV DoHS/BMS
ACTION NO.: 26-BOR-1308

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,

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**

[REDACTED]

Appellant,

v.

Action Number: 26-BOR-1308

**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 March 4, 2026.

The matter before the Hearing Officer arises from the January 21, 2026 decision by the Respondent to deny Intellectual and Developmental Disabilities Waiver (I/DD Waiver) program services.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist with PC&A. The Appellant was present but was represented by his mother, [REDACTED]. In attendance by telephone, but not participating, was [REDACTED] cousin. 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 Denial Notice, dated January 21, 2026
- D-3 Independent Psychological Evaluation, dated January 19, 2026
- D-4 Addendum to Psychological Testing Report, dated October 29, 2020
- D-5 Confidential Psychological Testing Report, dated September 28, 2020

Appellant's Exhibits*:

- A-1 Letter from [REDACTED] APRN, CNP, dated February 6, 2026

*Upon agreement of the parties, the hearing was held open to locate medical record exhibits the Appellant testified she had emailed to the Board of Review Central. However, upon inquiry to, and investigation by, the Board of Review Central, no exhibits from the Appellant were located.

Therefore, this decision will be based upon 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 28-year-old who applied for the 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) Charley Bowen, a licensed psychologist employed by PC&A, made the eligibility determination regarding the Appellant.
- 4) The Respondent issued a notice on January 21, 2026, denying the Appellant's application for the I/DD Waiver program explaining that the "Documentation submitted for review does not indicate an eligible diagnosis for the I/DD waiver program of either Intellectual Disability or a Related Condition which is severe. Policy specifically excludes Mental Illness as a potential Related Condition." (Exhibit D-2)
- 5) On January 19, 2026, licensed psychologist [REDACTED] conducted an Independent Psychological Evaluation (IPE) of the Appellant and prepared the IPE report. (Exhibit D-3)
- 6) The Appellant was tested using the Wechsler Adult Intelligence Scale-5th Edition (WAIS-5), which is a tool used to measure the Appellant's intellectual/cognitive achievement. (Exhibit D-3)
- 7) The WAIS-5 produces qualifying results of scores that are two standard deviations below the mean of 100, which is 15, or tests scores that are below 70.
- 8) The WAIS-5 resulted in an IQ score of 79 and produced no other scores indicating an eligible diagnosis of intellectual disability. (Exhibit D-3)
- 9) [REDACTED] diagnosed the Appellant with Schizophrenia, Borderline Intellectual Functioning, Tobacco Use Disorder, and R/O Specific Learning Disorder with Impairment in Mathematics, History of head trauma. (Exhibit D-3)

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.

DISCUSSION

The Respondent denied medical eligibility for the Appellant's I/DD Waiver Program application because the submitted documentation did not indicate an eligible diagnosis for the I/DD waiver program of either Intellectual Disability or a related condition which is severe, specifically noting that mental illness is excluded as a potential related condition. The Appellant appeals the Respondent's denial.

Each eligibility criteria of Diagnosis, Functionality, Active Treatment, and Intermediate Care Facilities for Individuals with Intellectual Disabilities (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 specifically excludes mental illness as a related condition.

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. In reviewing the submitted documentation, Mr. Bowen noted that the Appellant has had major mental health diagnoses which would affect his adaptive skills. Mr. Bowen did note that traumatic brain injury (TBI) may be considered as a related condition if severe. However, there was no documentation which showed that the concussion which the Appellant incurred at age 12 was severe. Mr. Bowen concluded that after reviewing the submitted documentation, it failed to show that the Appellant met the diagnostic criteria. Because policy requires that an applicant meet all four established criteria for program eligibility, Mr. Bowen did not consider any of the other criteria for eligibility.

The Appellant's mother, [REDACTED] explained that the Appellant needs constant reminders for his activities of daily living, he loses track of time and he needs constant monitoring. [REDACTED]. [REDACTED] testified that there was no follow up of the Appellant's concussion he suffered when he was 12 years old after being attacked by gang members. [REDACTED] explained that her main focus at that time was to get the Appellant away from the dangerous situation by sending him to live with his father in another state. [REDACTED] testified that unfortunately, the Appellant's father did not follow up with the Appellant's concussion. Therefore, there is no documentation of the severity of the TBI.

In reviewing the evidentiary documents, a 2020 Confidential Psychological Testing Report (CPTR) conducted when the Appellant was 23 years old, indicated that the Appellant graduated from high school in regular education classes and completed two semesters of college. The CPTR used the Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV) to measure his cognitive ability and found that the Appellant fell in the low average range with a full scale IQ of 81. This score compares with the WAIS-5 administered in the 2026 IPE showed a borderline full scale IQ score of 79. Both the 2020 CPTR and the 2026 IPE diagnosed the Appellant with Schizophrenia. In an addendum to the 2020 CPTR, the psychologist indicated that "It is likely that [REDACTED] s co-occurring

diagnoses of Schizophrenia and Other Specified Depressive Disorder impact his ability to complete tasks that would be developmentally appropriate for his age level.”

After reviewing the evidentiary documentation along with the testimony provided, 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 11th day of March 2026.

Lori Woodward, Certified State Hearing Officer