



March 26, 2026



RE: [REDACTED] a Protected Individual, v. WV DoHS
ACTION NO.: 26-BOR-1333

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 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: Angela Signore, WV DoHS
Kerri Linton, PC&A
Janice Brown, Acentra

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

██████████ **PROTECTED INDIVIDUAL,**

Appellant,

v.

Action Number: 26-BOR-1333

**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 Respondent's denial of benefits under the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program as outlined in a notice dated January 6, 2026.

At the hearing, the Respondent appeared by Kerri Linton, Long-Term Care Clinical Consultant, Bureau for Medical Services. The Appellant was represented by her mother, ██████████. 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 513.6
- D-2 Notice of Denial dated January 6, 2026
- D-3 Independent Psychological Evaluation dated December 15, 2025
- D-4 ██████████ Initial Patient Visit report dated September 1, 2022
- D-5 Positive Behavior Intervention Pathway from ██████████ School dated December 9, 2024
- D-6 Individualized Education Program, ██████████ County Schools, dated December 6, 2024

- D-7 [REDACTED] County Schools Psychoeducational Evaluation, exam date November 12, 2024
- D-8 [REDACTED] County Schools Functional Behavior Assessment, evaluation dates October 28, 2024, and November 12, 2024
- D-9 [REDACTED] Follow Up Progress Notes dated August 7, 2025
- D-10 [REDACTED] After Visit Summary dated August 26, 2025

Appellant’s Exhibits:

- A-1 Independent Psychological Evaluation dated December 15, 2025, with highlighted areas

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, who is currently six years old, applied for the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program.
- 2) The Respondent sent the Appellant a Notice of Decision on January 6, 2026, indicating that her I/DD Waiver application was denied (Exhibit D-2).
- 3) The January 6, 2026, notice states that the Appellant’s I/DD Waiver Medicaid application was denied because “Documentation submitted for review does not indicate the need for an ICF level of care. Documentation submitted for review does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility” (Exhibit D-2).
- 4) The Notice states that substantial deficits were found in none of the major life areas identified in policy including *Self-Care, Learning, Self-Direction, Receptive or Expressive Language, Mobility, and Capacity for Independent Living* (Exhibit D-2).
- 5) The Appellant underwent an Independent Psychological Evaluation (IPE) on December 15, 2025, at age six years (Exhibit D-3).
- 6) The December 2025 IPE includes diagnoses for the Appellant of Autism Spectrum Disorder, Level 3, “with accompanying intellectual impairment, with accompanying language impairment,” and Attention Deficit/Hyperactivity Disorder (Exhibit D-3).
- 7) The Respondent conceded that the Appellant has a program-eligible diagnosis of Autism Spectrum Disorder, Level 3.

- 8) The Appellant can wash herself if a wash cloth is prepped, and requires assistance and reminders for most self-care tasks (functional area of *Self-Care*) (Exhibit D-3).
- 9) The Appellant is toilet-trained but still uses Pull-Up training pants (functional area of *Self-Care*) (Exhibit D-3).
- 10) The Appellant can eat with utensils but becomes easily distracted (functional area of *Self-Care*) (Exhibit D-3).
- 11) The Appellant can express her needs but struggles to express herself when she is upset. She speaks in sentences and uses echolalia, scripting speech, and stereotyped mumbling. The Appellant received speech therapy services while she attended public school (functional area of *Receptive or Expressive Language*) (Exhibit D-3).
- 12) The Appellant has difficulty staying on task but can sing her ABCs, write some letters, and write her name. Academic testing completed in 2024 showed average-range academic skills (functional area of *Learning*) (Exhibit D-3).
- 13) The Appellant no longer attends public school due to her aggressive behavior, including using foul and threatening language, scratching, biting, and tearing up furniture (Exhibit D-3).
- 14) The Appellant can walk independently, use stairs, and write, although she received occupational therapy services while in school for sensory processing skills (functional area of *Mobility*) (Exhibit D-3).
- 15) The Appellant typically makes spontaneous choices and can choose between two activities. She initiates and can follow one-step instructions. The Appellant has hobbies and enjoys drawing (functional area of *Self-Direction*) (Exhibit D-3).
- 16) The Appellant struggles with situational awareness and does not understand danger. She plays alongside others but shows little interest in peers (with the exception of her brother). She sometimes puts the dishes in the sink or clothes in the hamper (functional area of *Capacity for Independent Living*) (Exhibit D-3).
- 17) A formal mental status examination was attempted during the December 2025 IPE; however, the exam could not be completed due to the Appellant's social communication delays and refusal to answer (Exhibit D-3).
- 18) The Respondent considers scores of 1 and 2 as program-eligible scores on the Adaptive Behavior Assessment System, Third Edition (ABAS-3). The Appellant received scores ranging from 3 to 7 on the ABAS-3 Parent Form completed during the December 2025 IPE. The scores included: communication skills- 3; functional academics skill- 4; self-direction skills- 5; leisure skills- 5; social skills- 5; community use skills- 7; home living skills- 5; health and safety skills- 4; and self-care skills- 7 (Exhibit D-3).

- 19) Information from [REDACTED] obtained when the Appellant was three years old, confirms a diagnosis of Autism Spectrum Disorder, Level 3 (Exhibit D-4).
- 20) When the Appellant attended early childhood/pre-K classes at [REDACTED] Elementary School, she participated in the general education environment 97 percent of the time and in the special education environment three percent of the time (Exhibit D-6).
- 21) The Appellant received a full-scale IQ score of 68 and a verbal comprehension index score of 73 on the Wechsler Preschool and Primary Scale of Intelligence- Fourth Edition (WPPSI-IV) during a Psychoeducational Evaluation completed by [REDACTED] County Schools on November 12, 2024 (Exhibit D-7).
- 22) The Appellant received low average to high average scores on the Wechsler Individual Achievement Test- Fourth Edition (WIAT-4) in word reading, alphabet writing fluency, and math problem solving (Exhibit D-7).

APPLICABLE POLICY

West Virginia Medicaid Regulations Chapter 513.6:

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 may, if severe and chronic in nature, 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 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 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 in *Section 513.6.2.2 Functionality*.

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 intellectual disability 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 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

To qualify medically for the I/DD Waiver Medicaid Program, policy states that an 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. In addition, an individual must meet the need for active treatment/services criteria.

Kerri Linton, Long-Term Care Clinical Consultant with the Bureau for Medical Services, testified that the documentation submitted for review confirms the presence of an I/DD Waiver program-eligible diagnosis; however, no areas of substantial adaptive deficits could be identified for the Appellant.

The Appellant's mother, [REDACTED] testified that she believes the Appellant's functionality is worse than was depicted in the documentation submitted for review. She stated that the Appellant had to be removed from public school, requires assistance with self-care, and cannot communicate with other children. [REDACTED] questioned whether the Appellant's inability to complete IQ testing during the IPE would have a bearing on her eligibility for the program; however, Ms. Linton explained that the Appellant has an eligible diagnosis for the program of Autism Spectrum Disorder, Level 3. The application was denied because the Respondent could not identify substantial adaptive deficits for the Appellant in the major life areas. While the Appellant's Adaptive Behavior Scale scores reflect delays, Ms. Linton testified that I/DD Program guidelines are very stringent and the scores were not within the range for eligibility.

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

CONCLUSIONS OF LAW

- 1) To qualify for I/DD Waiver 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 I/DD Waiver eligibility.
- 3) The Respondent's decision to deny I/DD Waiver 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 I/DD Waiver Medicaid application.

ENTERED this 26th day of March 2026.

**Pamela L. Hinzman
State Hearing Officer**