



April 16, 2026

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVD_oHS/BMS
ACTION NO.: 26-BOR-1440

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Angela Signore, Department Representative
Kerri Linton, Department Representative
Janice Brown, Department Representative

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

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 26-BOR-1440

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on April 2, 2026, upon a timely appeal filed on February 24, 2026.

The matter before the Hearing Officer arises from the January 29, 2026 decision by the Respondent to deny the Appellant's application for I/DD Waiver Services due to unfavorable medical eligibility findings.

At the hearing, the Respondent appeared by Charley Bowen. The Appellant was self-represented and appeared by his mother, ■ All witnesses were placed under oath, and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|---|
| D-1 | BMS Provider Manual Chapter 513 Intellectual and Developmental Disabilities Waiver (excerpt) |
| D-2 | Notice of decision, dated January 29, 2026 |

- D-3 Independent Psychological Evaluation (IPE)
Date of evaluation: November 24, 2025
- D-4 [REDACTED] County School records
Individualized Education Program, dated August 24, 2022
- D-5 [REDACTED] County School records
- D-6 Individualized Education Program
Meeting date: August 29, 2017
- D-7 Wechsler Individual Achievement Test, 4th Edition (WIAT-4)
Test date: August 19, 2022
- D-8 IPE, Evaluation date: August 2 and 6, 2012
- D-9 Notice of decision, dated August 22, 2012

Appellant’s Exhibits:

- A-1 IPE, Evaluation date: August 2 and 6, 2012
IPE, Evaluation date: November 24, 2025
[REDACTED] County School records
Individualized Education Program, dated August 24, 2022
Individualized Education Program, dated August 29, 2017
Wechsler Individual Achievement Test, 4th Edition (WIAT-4)
Test date: August 19, 2022

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 applied for the Intellectual and Developmental Disabilities (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 (Exhibit D-2), dated January 29, 2026, denying the Appellant's application for the I/DD Waiver Program.
- 5) This notice (Exhibit D-2) reads, in part, "Documentation submitted for review does not include records from the developmental period (prior to the age of 22) to confirm a potential eligible diagnosis of Mild Intellectual Disability with concurrent adaptive deficits as required by policy."
- 6) A psychological evaluation of the Appellant was conducted on November 24, 2025. (Exhibit D-3)
- 7) The Appellant's date of birth is [REDACTED]. (Exhibit D-3)
- 8) At the time of this evaluation (Exhibit D-3), the Appellant was 23 years old.
- 9) In conjunction with this evaluation (Exhibit D-3), the Appellant was diagnosed with *Unspecified Mood Disorder*, which is not an eligible diagnosis.
- 10) In conjunction with this evaluation (Exhibit D-3), the Appellant was diagnosed with *Autism Spectrum Disorder, without Accompanying Language and with Intellectual Impairment, Requiring Level 1 Support for Social Communication; and Level 1 Support for Restricted/Repetitive Behavior*.
- 11) In conjunction with this evaluation (Exhibit D-3), the Appellant was diagnosed with *Intellectual Disability, Mild*.
- 12) A diagnosis of *Autism Spectrum Disorder* is a potentially eligible diagnosis for the I/DD Waiver Program, if severe and chronic in nature.
- 13) A diagnosis of *Mild Intellectual Disability* is a potentially eligible diagnosis for the I/DD Waiver Program, if the intellectual disability is accompanied by concurrent substantial deficits manifested prior to age 22.
- 14) A psychological evaluation of the Appellant was conducted in August 2012. (Exhibit D-8)
- 15) At the time of this evaluation (Exhibit D-8), the Appellant was 10 years old, and within the developmental period.
- 16) In conjunction with this evaluation (Exhibit D-8), the Appellant was diagnosed with *Pervasive Developmental Disorder, NOS; Mood Disorder, NOS; and Learning Disorder, NOS*.
- 17) The diagnoses of the Appellant from this evaluation (Exhibit D-8) were not eligible diagnoses for the I/DD Waiver Program.

- 18) As part of the August 2012 evaluation (Exhibit D-8), the Appellant was administered the Wechsler Intelligence Scale for Children, 4th Edition (WISC-IV).
- 19) The evaluating psychologist noted in part, regarding the Appellant's WISC-IV results, "Due to the variability of his index scores, [Appellant's] [Full Scale IQ] (which fell in the mildly impaired range), is not a good estimate of his general cognitive functioning." (Exhibit D-8)
- 20) As part of the August 2012 evaluation (Exhibit D-8), the Appellant was administered the Childhood Autism Rating Scale, 2nd Edition (CARS-II).
- 21) The Appellant attained a CARS-II score of 32, and the evaluating psychologist noted, regarding these results, "suggests mild to moderate symptoms of an autism spectrum disorder present." (Exhibit D-8)
- 22) A previous I/DD application from the Appellant was denied in August 2012. (Exhibit D-9)
- 23) The Respondent's notice (Exhibit D-9) to the Appellant, dated August 22, 2012, provided the following basis for the denial:

The evaluating psychologist was unable to make a definitive diagnosis with regard to a qualifying condition for I/DD Waiver eligibility. Eligibility cannot be established on the basis of a provisional or deferred diagnosis [*sic*] The presence of an array of other diagnoses presents a complicated diagnostic picture. Inasmuch as the presence of a qualifying diagnosis is unclear, it is evident that the degree of intellectual disability which typically results in the need for an institutional setting is not present in this case, nor is the presence of a related condition which is severe. Therefore, [Appellant] does not meet the diagnostic eligibility criteria.

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 in relevant sections:

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 § 456.70(b) *Medical, psychological, and social evaluations:*

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.

Bureau for Medical Services Provider Manual Chapter 513 explains medical eligibility for the I/DD Waiver program:

513.6.2 Initial Medical Eligibility

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. 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 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.

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 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 Disability 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 disability.

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.

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.

513.6.2.3 Active Treatment

Documentation must support 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 Appellant requested a hearing to appeal the Respondent's denial of his application for participation in the I/DD Waiver Program due to unfavorable medical eligibility findings. The Respondent must show, by a preponderance of the evidence, that it correctly denied the

Appellant's application on this basis.

Applicants for the I/DD Waiver Program must establish medical eligibility in four components: diagnostic, functionality, the need for active treatment and the requirement of an ICF/IID level of care. The Appellant's application was denied for an unmet diagnostic component.

The Appellant was assessed by a psychologist in 2025 and 2012. In 2012, the Appellant was within the developmental period, defined by policy as prior to age 22. In 2025, the Appellant was no longer in the developmental period. The Appellant's IPE from 2025 showed the Appellant has an eligible diagnosis of Mild Intellectual Disability outside the developmental period. Evidence did not show an eligible diagnosis for the Appellant within the developmental period. Autism Spectrum Disorder is a potentially eligible diagnosis, depending on severity. In 2025, the Appellant was diagnosed with Autism Spectrum Disorder at Level 1, which does not meet the Level 3 standard for a related condition that is "severe and chronic in nature." In 2012, the Appellant was not diagnosed with Autism Spectrum Disorder, and his CARS-II results were noted to correspond to "mild to moderate symptoms" of Autism Spectrum Disorder. None of the Appellant's other diagnoses were eligible diagnoses for the I/DD Waiver Program.

The Appellant's 2012 IPE did not offer a diagnosis of Intellectual Disability within the developmental period to confirm the manifestation of his condition prior to age 22 as required by policy. The Appellant's evaluating psychologist at the time noted the Appellant's WISC-IV results were not a good estimate of his cognitive abilities. Other evidence offered did not contain results of original testing within the developmental period.

The Appellant's mother testified regarding the Appellant's functional abilities. The Appellant cannot cook, take his medications, tie his shoes, ride a bicycle, or talk about himself other than his interests. The Appellant is mobile and can feed, dress and bathe himself. The Appellant's mother qualified these abilities as requiring supervision and sometimes are performed by the Appellant in inappropriate ways.

The Appellant currently receives Social Security benefits due to Autism Spectrum Disorder. He previously received services in the school system on this basis. The qualifying standards used by these entities are not the same as those for the I/DD Waiver Program.

The testimony and evidence from the hearing shows the Appellant did not meet the diagnostic component of medical eligibility for the I/DD Waiver Program and therefore did not meet medical eligibility as a whole. The Respondent correctly denied the Appellant's application for I/DD Waiver services on this basis.

CONCLUSIONS OF LAW

- 1) Because the Appellant did have an eligible diagnosis for the I/DD Waiver Program within the developmental period, the Appellant did not meet the diagnostic component of I/DD Waiver medical eligibility.

- 2) Because the Appellant did not meet the diagnostic component, he did not establish medical eligibility for the program as a whole.
- 3) Because the Appellant did not establish medical eligibility for the I/DD Waiver Program, the Respondent must deny his application for I/DD Waiver services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's application for the I/DD Waiver Program based on unfavorable medical eligibility findings.

ENTERED this _____ day of April 2026.

**Todd Thornton
State Hearing Officer**