




April 29, 2026



RE:  a Protected Individual, v. WV DoHS  
ACTION NO.: 26-BOR-1282

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: Gary Michels, Esq., Assistant Attorney General  
Jason "Bob" Wible, Esq., Assistant Attorney General  
Angela Signore, WV DoHS  
Kerri Linton, PC&A  
Janice Brown, Acentra

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 26-BOR-1282**

**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 April 15, 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 February 5, 2026.

At the hearing, the Respondent was represented by Gary Michels, Esq., Assistant Attorney General, and Jason "Bob" Wible, Assistant Attorney General. Appearing as a witness for the Respondent was Kerri Linton, Psychologist Consultant, Bureau for Medical Services. The Appellant was present for the hearing and was represented by ■ Esq., Legal Aid of West Virginia. Appearing as witnesses for the Appellant were ■ the Appellant's mother, and ■ Psychiatric Mental Health Practitioner, ■

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 8, 2026
- D-3 Independent Psychological Evaluation dated December 1, 2025
- D-4 Letter from ■ dated September 23, 2025
- D-5 ■ report from appointment date October 3, 2025

D-6 Office Visit reports from Behavioral Medicine, [REDACTED] from office visits date June 23, 2016, August 5, 2016, December 5, 2017, and October 25, 2019

**Appellant's Exhibits:**

- A-1 [REDACTED] Medicine Progress Notes from 2011 through 2022
- A-2 Letter from [REDACTED] dated January 31, 2022
- A-3 Letter from [REDACTED] MD, dated November 7, 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, who is currently 24 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 8, 2026, indicating that his I/DD Waiver application was denied (Exhibit D-2).
- 3) The January 8, 2026, notice states that the Appellant's I/DD Waiver Medicaid application was denied because "Documentation submitted for review does not reflect an eligible diagnosis of Autism Spectrum Disorder, Level 3 during the developmental period (prior to age 22) as required by policy" (Exhibit D-2).
- 4) The Appellant underwent an Independent Psychological Evaluation (IPE) on December 1, 2025, at age 23 years, 10 months (Exhibit D-3).
- 5) The December 2025 IPE includes a diagnosis of "Autism Spectrum Disorder, requiring very substantial support (level 3), without accompanying intellectual impairment, without accompanying language impairment, associated with a neurodevelopmental, mental, or behavioral problem" (Exhibit D-3).
- 6) The psychologist recommended that the Appellant could benefit from working with the Division of Rehabilitative Services for additional help in improving functioning/life skills, job coaching, and driver's education courses (Exhibit D-3).
- 7) The Appellant can wash his hair independently but won't brush it. He can brush his teeth but typically refuses to do so. He showers once per week, toilets independently, and can feed himself (Exhibit D-3).
- 8) The Appellant can communicate verbally without the use of an assistive device but struggles to express his thoughts and feelings (Exhibit D-3).

- 9) The Appellant was homeschooled and has the equivalent of a high school diploma (Exhibit D-3).
- 10) The Appellant has gross motor skills but has difficulty with fine motor skills (Exhibit D-3).
- 11) The Appellant can choose preferences if given options of things that interest him, such as video games or anime. He occasionally requests specific foods and exhibits preferences for shirts (Exhibit D-3).
- 12) The Appellant has never had a job and does not have a driver's license. He previously participated in scouting and church but does not currently socialize or participate in extracurricular activities (Exhibit D-3).
- 13) A Wechsler Adult Intelligence Scale-Fourth Edition was administered to the Appellant as part of the December 2025 IPE. The Appellant scored 89 in verbal comprehension (low average range); 102 in perceptual reasoning (average range); 82 in working memory (low average range); and 74 in processing speed (borderline range). The Appellant achieved a full-scale IQ score of 85, which falls in the low average range of intellectual functioning. The Appellant received a 95 General Ability Index (GAI) score, which falls in the average range of functioning (Exhibit D-3).
- 14) The Appellant's mother and brother completed the Adaptive Behavior Assessment System, Third Edition (ABAS-3) instrument for the Appellant, recording extremely low scaled scores of 1 and 2 in the areas of communication, community use, functional academics, home living, health and safety, leisure, self-care and self-direction (Exhibit D-3).
- 15) The Respondent considers scores of 55 and below as I/DD Waiver program-eligible scores on the Wide Range Achievement Test-Fifth Edition (WRAT-5). The Appellant was administered a WRAT-5 during his December 2025 IPE and received scores of 103 in word reading (average range); 94 in spelling (average range); 65 in math computation (extremely low range); 96 in sentence comprehension (average range); and 99 in reading composite (average range) (Exhibit D-3).
- 16) The Appellant received a score of 45 on the Childhood Autism Rating Scale, Second Edition (CARS-2), completed by his mother. The score of 45 reflected severe symptoms of Autism Spectrum Disorder (ASD) (Exhibit D-3).
- 17) The Appellant received a score of 21 on the Autism-Spectrum Quotient (AQ) Test, a self-administered questionnaire designed to assess the presence of Autism Spectrum traits in adults. Eighty percent of individuals diagnosed with Autism Spectrum Disorder or a related disorder normally score 32 or higher on the test (Exhibit D-3).
- 18) On September 23, 2025, Psychiatric Mental Health Practitioner Mary Harper diagnosed the Appellant with Autism Spectrum Disorder requiring very substantial support, as well as agoraphobia, Tourette's disorder, Attention Deficit/Hyperactivity Disorder (AD/HD),

specific learning disorder with impairment in written expression, mathematics and reading, and selective mutism (by history) (Exhibit D-4).

- 19) Documentation from [REDACTED] completed on October 3, 2025, when the Appellant was age 23, lists a diagnosis of Autism Spectrum Disorder Level 3 (Exhibit D-5).
- 20) Documentation from Behavioral Medicine, [REDACTED] dated June 23, 2016, completed by [REDACTED] M.D., when the Appellant was age 14, lists a diagnosis of Autism Spectrum Disorder Level 1, anxiety, and Tourette's syndrome (Exhibit D-6).
- 21) Progress Notes completed by Dr. [REDACTED] on August 5, 2016, also list a diagnosis of Autism Spectrum Disorder Level 1 (Exhibit D-6).
- 22) [REDACTED] Progress Notes from 2017 and 2019 list a diagnosis of Autism Spectrum Disorder with no specified level (Exhibit D-6).
- 23) Records from [REDACTED] from 2013, 2014, and 2015 indicate that the Appellant had been diagnosed with Pervasive Developmental Disorder-Not Otherwise Specified, "two years ago" (Exhibit A-1).
- 24) The Appellant was diagnosed with ASD Level 1 consistently in 2016 (Exhibit A-1)
- 25) The Appellant was diagnosed with ASD requiring substantial support in February 2017, which is indicative of ASD Level 2. However, the Appellant was diagnosed with ASD Level 1 during the same period (Exhibit A-1).
- 26) The Appellant was diagnosed with ASD Level 1 during other medical visits in 2017, 2018, and 2019 (Exhibit A-1).
- 27) The Appellant has a history of selective mutism (Exhibit A-1).
- 28) The Appellant has a history of anxiety, depression, and psychosocial stressors (Exhibit A-1).

### **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 75<sup>th</sup> 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 have at least three substantial adaptive deficits in the major life areas identified in policy and meet the need for active treatment/services criteria.

Kerri Linton, Psychologist Consultant with the Bureau for Medical Services, testified that no documentation was provided to the Respondent to support an eligible diagnosis of Autism Spectrum Disorder Level 3 for the Appellant prior to age 22, and there is no indication that the Appellant meets substantial adaptive deficit criteria. While the Appellant has strengths and weaknesses in his cognitive abilities, evidence does not support the presence of an intellectual disability. Ms. Linton contended that the low ABAS-3 scores reported by the Appellant's mother and brother are inconsistent with the Appellant's testing scores, and the Appellant's score on the Autism Quotient Test (completed as part of his December 2025 IPE) does not reflect Level 3 ASD symptoms. While the Appellant had a low math testing score, the Respondent could not identify a specific learning disability in reading or writing. Ms. Linton acknowledged the Appellant's period of selective mutism; however, she contended that the mutism was a choice and was successfully treated. Ms. Linton testified that persons qualifying for an ICF level of care would not normally be referred for rehabilitative services as was recommended in the Appellant's December 2025 IPE. Ms. Linton pointed out that the Appellant had a consistent diagnosis of ASD Level 1 (and at one point, Level 2) prior to age 22, and the Appellant's records prior to age 22 reveal a history of mental health issues,

which can cause resistance in functioning. While policy does not specifically indicate that a diagnosis of ASD Level 3 is required to establish eligibility for the I/DD Waiver Program, that diagnosis is most frequently associated with the level of severity required for the program.

The Appellant's [REDACTED] records indicate a historical diagnosis of PDD NOS; however, the Appellant's attorney stated that she was unable to secure further medical documentation concerning that diagnosis.

[REDACTED] Psychiatric Mental Health Practitioner, testified that she has been treating the Appellant since September 2024 on an outpatient basis. [REDACTED] stated that she diagnosed the Appellant with ASD, requiring very substantial supports, AD/HD, Tourette's syndrome, learning disorder, agoraphobia and unspecified depressive disorder. [REDACTED] contended that the Appellant lacks self-care behaviors, will not take his medications independently, and has restrictive repetitive behaviors that have persisted since his developmental period. She testified that the Appellant lacks social emotional reciprocity and, when conversing, will direct the conversation back to his area of interest, Japanese anime video games. [REDACTED] stated that the Appellant has communication deficits, lacks self-direction, and does not have the ability to live independently. [REDACTED] reviewed the Appellant's medical records prior to age 22 (the earliest record from age 14) and discovered that his behavior deficits have been historically recorded.

The Appellant's mother, [REDACTED] testified that the Appellant was first diagnosed with autism at age 7. She stated that the Appellant has always had challenges and could not relate to others in settings such as church, scouting, or a homeschool cooperative. The Appellant struggles with independence and cannot perform tasks with consistency. [REDACTED] testified that the Appellant's condition worsened when he reached puberty and his state has not changed much since age 14. The Appellant does not go anywhere without his mother and carries a jacket for security that he named "Frederick." If she could no longer care for him, [REDACTED] surmised that the Appellant would either have to live with her oldest son or be placed in a facility.

While the Appellant's condition poses many challenges, the Appellant was consistently diagnosed with ASD Level 1 (ASD Level 2 on one occasion) in his developmental period. Information provided during the hearing does not support 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. Based on evidence and testimony, the Appellant's decision to deny eligibility for the I/DD Waiver Medicaid Program is affirmed.

### **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) 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.

- 3) Documentation submitted for review does not confirm the presence of an eligible diagnosis for the Appellant prior to age 22.
- 4) 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 29th day of April 2026.**

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**Pamela L. Hinzman  
State Hearing Officer**