May 13, 2026

[redacted]

RE: [redacted] A PROTECTED INDIVIDUAL v. WVDoHS/BMS
ACTION NO.: 25-BOR-3463

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: Gary Michels, Esq., Assistant Attorney General
Jason Wible, Esq., Assistant Attorney General

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted] A PROTECTED INDIVIDUAL,

Appellant,

v. **Action Number: 25-BOR-3463**

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] 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. Upon a timely appeal filed on December 13, 2025, this fair hearing was convened on the following dates: February 12, March 23, April 1, and April 22, 2026.

The matter before the Hearing Officer arises from the September 23, 2025 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 Attorneys Gary Michels and Jason Wible. Appearing as a witness for the Respondent was Kerri Linton. The Appellant was represented by Attorney [redacted]. Appearing as witnesses for the Appellant were [redacted]. 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 (excerpt)
- D-2 Notice of decision, dated September 23, 2025
- D-3 Independent Psychological Evaluation (IPE), dated August 18, 2025
- D-4 Medical records, dated August 14, 2025

D-5 Medical records, dated June 9, 2025
D-6 Medical records, dated June 25, 2025
D-7 Medical records, dated September 9, 2014
D-8 Medical records, dated August 28, 2015
D-9 Medical records, dated October 7, 2015
D-10 Medical records, dated October 25, 2017
D-11 Medical records, dated November 5, 2015
D-12 IPE, dated May 6, 2025
D-13 Notice of decision, dated May 12, 2025
D-14 Medical records, dated June 24, 2022
D-15 Medical records, dated July 29, 2024
D-16 Initial Psychiatric Evaluation, dated June 24, 2022
D-17 Medical records, dated March 17, 2025
D-18 Medical records, dated May 2, 2025
D-19 Medical records, dated April 30, 2025
D-20 IPE, dated September 30, 2024
D-21 Notice of decision, dated December 9, 2024
D-22 IPE, dated April 19, 2023
D-23 Notice of decision, dated May 9, 2023
D-24 Medical records, dated July 27, 1998
D-25 Psychiatric Evaluation, dated December 26, 1996
D-26 Medical records, dated December 26, 1996
D-27 Medical records, dated January 2, 1997
D-28 School records, dated May 17, 1999 (Individualized Education Program, or IEP)
D-29 School records, dated December 19, 1997 (IEP)
D-30 School records, dated April 28, 2008
D-31 School records, dated December 19, 2017 (Graduation date: May 29, 2010)
D-32 School records, dated March 31, 2010 (IEP)
D-33 School records, dated April 30, 2008 (IEP)
D-34 Psychological Evaluation, dated June 7, 2008
D-35 School records, dated May 23, 2008
D-36 IPE, dated September 30, 2020
D-37 Notice of decision, dated November 17, 2020
D-38 IPE, dated July 17, 2020
D-39 Notice of decision, dated August 31, 2020
D-40 IPE, dated September 18, 2019
D-41 Notice of decision, dated October 1, 2019
D-42 IPE, dated January 25, 2018
D-43 Notice of decision, dated February 20, 2018
D-44 Second Medical IPE, dated March 15, 2018
D-45 Notice of decision, dated April 20, 2018
D-46 IPE, dated January 20, 2016
D-47 Notice of decision, dated February 5, 2016
D-48 Second Medical IPE, dated March 18, 2016
D-49 Notice of decision, dated April 12, 2016
D-50 IPE, dated August 15, 2014

D-51 Notice of decision, dated August 29, 2014
D-52 Additional school and medical records

Appellant's Exhibits:

A-1 Consent Decree, entered October 8, 1981
A-2 Olmstead v. [redacted] decided June 22, 1999
A-3 General Case Report, [redacted], Incident date: August 9, 1997
Accompanying statement, dated August 11, 1997
A-4 IPE, Evaluation date: August 18, 2025
A-5 Adult Needs and Strengths Assessment, dated December 19, 2025
A-6 IEP, [redacted] County Schools, dated May 17, 1999
A-7 Notice of Individual Evaluation/Re-Evaluation Request, [redacted] County Schools
Report date: April 30, 2008

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 including eligibility determinations related to the I/DD Waiver Program.

3) Kerri Linton, a licensed psychologist employed by PC&A, made the eligibility determination regarding the Appellant.

4) The Respondent issued a notice (Exhibit D-2), dated September 23, 2025, 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 indicate substantial adaptive deficits in at least 3 major life areas within the developmental period (prior to the age of 22) as required by policy."

6) This notice (Exhibit D-2) noted that the documentation failed to demonstrate substantial limitations in any major life area other than *Learning*.

7) Prior to the September 2025 denial, the Respondent denied 11 earlier applications from the Appellant for the I/DD Waiver Program.

8) The Respondent issued an August 29, 2014 denial notice (Exhibit D-51) to the Appellant which noted the Appellant did not have "substantial adaptive deficits in three or more of the six major life areas…" and noted that the major life area of *Learning* was awarded.

9) The Respondent issued a February 5, 2016 denial notice (Exhibit D-47) to the Appellant which noted the Appellant did not meet the policy requirement for "three major life areas," but that two major life areas – *Learning* and *Self-Direction* – were awarded.

10) The Respondent issued an April 12, 2016 denial notice (Exhibit D-49) to the Appellant which noted the Appellant did not meet the policy requirement for "three major life areas," but that two major life areas – *Learning* and *Self-Direction* – were awarded.

11) The Respondent issued a February 20, 2018 denial notice (Exhibit D-43) to the Appellant which noted the Appellant did not meet the policy requirement for "three major life areas," but that two major life areas – *Learning* and *Self-Direction* – were awarded.

12) The Respondent issued an April 20, 2018 denial notice (Exhibit D-45) to the Appellant which noted the Appellant did not meet the policy requirement for "three major life areas," but that two major life areas – *Learning* and *Self-Direction* – were awarded.

13) The Respondent issued an October 1, 2019 denial notice (Exhibit D-41) to the Appellant which noted the Appellant did not have "substantial adaptive deficits in three or more of the six major life areas…" and noted that the major life area of *Learning* was awarded.

14) The Respondent issued an August 31, 2020 denial notice (Exhibit D-39) to the Appellant which awarded the major life area of *Learning* and noted, in part, "the presence of substantial adaptive delays within the developmental period in any major life area, other than in learning, is not supported within the documents available for review."

15) The Respondent issued a November 17, 2020 denial notice (Exhibit D-37) to the Appellant which stated, in part, "the presence of substantial adaptive deficits in any major life area other than learning has not been established. Rather, evidence is present to suggest adaptive functioning did not meet policy requirements of three standard deviations below the mean at the age of 17 in any major life [*sic*] other than learning…"

16) The Respondent issued a May 9, 2023 (Exhibit D-23) denial notice to the Appellant which awarded *Learning* and noted, in part, "No documentation in support of the presence of substantial adaptive delays within the developmental [*sic*], other than functional academics, has been submitted for review."

17) The Respondent issued a December 9, 2024 (Exhibit D-21) denial notice to the Appellant which read, in part, "the presence of substantial adaptive deficits in any major life area other than learning has not been established. Rather, evidence is present to suggest adaptive functioning did not meet policy requirements of three standard deviations below the mean at the age of 17 in any major life [*sic*] other than learning…"

18) The Respondent issued a May 12, 2025 (Exhibit D-13) denial notice to the Appellant which stated, in part, "Documentation submitted for review indicates a substantial adaptive deficit within the developmental period (prior to age 22) in learning only. He does not meet eligibility requirements for functionality as a result. At present, the measure of adaptive behavior was rendered invalid."

19) The Appellant was born in August 1990.

20) The Appellant's functionality was measured utilizing the Adaptive Behavior Assessment System – Third Edition (ABAS-3).

21) The ABAS-3 is a tool used to measure adaptive behavior which meets the policy requirement for an "appropriate standardized test for measuring adaptive behavior," with skill areas corresponding to all "major life areas" defined by policy with the exception of *Mobility*.

22) ABAS-3 skill area scores of 1 or 2 are "eligible scores," which satisfy the "relevant test scores" component of the policy requirement that both test scores and narrative demonstrate substantial delays in an applicant's adaptive functioning.

23) The Appellant's ABAS-3 results in conjunction with his August 2025 (Exhibit D-3) IPE revealed scaled scores of 1 in every skill area.

24) The Appellant was not in the developmental period at the time of the August 2025 (Exhibit D-3) ABAS-3 results.

25) The Appellant's ABAS-3 results in conjunction with his May 2025 (Exhibit D-12) IPE were scaled scores of 1 in every skill area.

26) The Appellant's ABAS-3 results for this assessment (Exhibit D-12) lists the reporter or rater who completed the instrument for the Appellant as [redacted] RN, and the assessing psychologist noted, in part, "Ninety three [*sic*] of the rater's responses were guesses."

27) The assessing psychologist further noted about the Appellant's ABAS-3 results (Exhibit D-12), in part, "the current ratings may reflect adaptive deficits related to mental illness, rather than developmental problems. These factors render the ABAS results invalid…"

28) The Appellant was not in the developmental period at the time of the May 2025 (Exhibit D-12) ABAS-3 results.

29) A June 2022 (Exhibit D-16) psychiatric evaluation of the Appellant did not note a test of adaptive functioning was administered and the Appellant was not in the developmental period at that time.

30) An IPE (Exhibit D-20) of the Appellant conducted in September 2024, when he was not in the developmental period, included ABAS-3 results with eligible test scores in the skill areas of *Communication*, *Community Use*, *Functional Academics*, *Self-Care*, *Self-Direction*, and *Social*.

31) An IPE of the Appellant conducted in April 2023 (Exhibit D-22), when he was not in the developmental period, included ABAS-3 test results with eligible scores in all skill areas.

32) A psychiatric evaluation of the Appellant conducted in December 1996 (Exhibit D-25) was within the Appellant's developmental period but included no test results measuring adaptive functioning.

33) In April 2008, the Appellant was rated within the school system using the ABES instrument, which is normed similar to the ABAS-3 and produces eligible scores in domains with standard scores of 1 or 2. (Exhibit D-30)

34) The Appellant was in the developmental period at the time of the April 2008 (Exhibit D-30) school system ABES rating.

35) The Appellant did not obtain eligible standard scores in any domain from the April 2008 (Exhibit D-30) school assessment.

36) The lowest ABES results for the Appellant from the April 2008 (Exhibit D-30) school assessment were standard scores of 4 in the domains, or subscales, of *Communication* and *Functional Academics*.

37) A psychological evaluation (Exhibit D-34) of the Appellant was conducted in June 2008, which did not include original adaptive functioning testing, but noted prior testing in the assessing psychologist's record review.

38) The assessing psychologist noted (Exhibit D-34), in part, "[Appellant] was last evaluated in November of 2006 and achieved a full scale IQ score of 41, academic standard scores that were severely limited, and adaptive behavior at 66 (score of "one" in community use, health and safety, and functional academics)…"

39) The Appellant was in the developmental period in November 2006.

40) The reported subdomains (Exhibit D-34) of community use and health and safety correspond to two of the three subdomains of *Capacity for Independent Living* required to establish that major life area as a whole.

41) The adaptive functioning of the Appellant was not rated or assessed during a school student evaluation conducted in May 2008 (Exhibit D-35).

42) The Appellant was assessed for adaptive functioning using the ABAS-3 as part of a September 2020 IPE (Exhibit D-36), when the Appellant was no longer in the developmental period, and obtained eligible standard scores in all skill areas.

43) The Appellant was assessed for adaptive functioning using the ABAS-3 as part of an IPE conducted in June and July of 2020 (Exhibit D-38), when the Appellant was no longer in the developmental period, and obtained eligible standard scores in all skill areas.

44) The Appellant was assessed for adaptive functioning using the ABAS-3 as part of a September 2019 IPE (Exhibit D-40), when the Appellant was no longer in the developmental period, and obtained eligible standard scores in all skill areas.

45) The Appellant was assessed for adaptive functioning using the ABAS-3 as part of a January 2018 IPE (Exhibit D-42), when the Appellant was no longer in the developmental period, and obtained eligible standard scores in the skill areas of *Functional Academics*, *Self-Direction*, and two skill areas corresponding to two of three subdomains of *Capacity for Independent Living*: social and health and safety.

46) The Appellant was assessed for adaptive functioning using the ABAS-3 as part of a March 2018 IPE (Exhibit D-44), when the Appellant was no longer in the developmental period, and obtained eligible standard scores in all skill areas.

47) At the time of a January 2016 IPE (Exhibit D-46), the Appellant was not in the developmental period, and his ABAS-3 results produced eligible scores in *Functional Academics*, *Self-Direction*, and only two of the subdomains of *Capacity for Independent Living* – community use and health and safety.

48) The Appellant was assessed for adaptive functioning using the ABAS-3 as part of a March 2016 IPE (Exhibit D-48), when the Appellant was no longer in the developmental period, and obtained eligible standard scores in the skill areas of *Functional Pre-Academics*, *Self-Direction*, and two skill areas corresponding to two of three subdomains of *Capacity for Independent Living*: community use and health and safety.

49) In August 2014 (Exhibit D-50), the Appellant was rated using the Adaptive Behavior Assessment System – Second Edition (ABAS-II). The Appellant was not in the developmental period at that time, and his ABAS-II results included eligible standard scores in the skill areas of *Communication*, *Functional Academics*, *Self-Direction*, and two skill areas corresponding to two of three subdomains of *Capacity for Independent Living*: social and community use.

50) The ABAS-II produces test results with an eligible score range identical to that of the ABAS-3.

51) [redacted] has known the Appellant "a number of years" and testified regarding her observations of the Appellant outside the developmental period.

52) [redacted] has been the Appellant's therapist for approximately one year, has known the Appellant for approximately five to six years, and testified regarding his observations of the Appellant outside the developmental period.

53) [redacted] has administered a program known as "STARS" to provide specialized skills training to individuals including the Appellant since its inception in September 2022. [redacted] testified regarding her observations of the Appellant outside the developmental period.

54) [redacted] has been employed by Mildred Mitchell Bateman Hospital since 2021, has been in contact with the Appellant during his residence there, and testified regarding her observations of the Appellant outside the developmental period.

55) Additional school records and medical records provided did not include testing of the Appellant's adaptive functioning within his developmental period.

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 functionality component.

The Appellant has applied for the I/DD Waiver Program at least twelve times between 2014 and 2025, and the Respondent has denied each application. The policy requirement for "concurrent substantial deficits manifested prior to age 22" establishes the need for the applicant's age. The Appellant was born in August 1990. Documents provided as evidence did not provide a clear date of birth for the Appellant. The Appellant's date of birth was listed as August 31, 1990 (Exhibit D-3), August 30, 1990 (Exhibits D-7 and D-52), August 3, 1990 (Exhibits D-8, D-9, D-10, D-11, D-20, and D-22), and August 2, 1990 (Exhibit D-12). The discrepancies appear to be typographical errors that do not affect the reliability of the documents for other information. Fortunately, the degree of accuracy that can be established regarding the Appellant's age is sufficient for dividing evidence into two categories: information from the Appellant's developmental period, as defined by policy, and information after the Appellant's developmental period.

The basis for the Respondent's denials of the Appellant's applications was unmet functionality. The policy for the I/DD Waiver Program requires an eligible diagnosis to be established with "concurrent substantial deficits manifested prior to age 22." Therefore, in addition to his current

status, the Appellant must show that he had narrative descriptions and test scores demonstrating adaptive functioning deficits as defined by policy within the developmental period.

Testimony offered as narrative descriptions of the Appellant's adaptive functioning were entirely outside the Appellant's developmental period. Based on the Appellant's age, the documentary evidence offered after 2012 does not address the developmental period. Finally, because policy requires both narrative and test scores to establish functionality, one element may not be substituted for the other. Test scores obtained from the Appellant's developmental period are limited and unfavorable.

Two documents (Exhibits D-25 and D-35) from the Appellant's developmental period did not include testing of his adaptive functioning. One document (Exhibit D-34) did not include testing but referenced incomplete test scores from a prior evaluation. If this incomplete record review is accepted, it only establishes *Functional Academics*, or *Learning* (which was awarded throughout the applications and denials included in the record), and two skill areas corresponding to subdomains of the *Capacity for Independent Living*. Because policy requires substantial limitations in three subdomains of *Capacity for Independent Living* to receive the deficit in that domain, reliance on this record review only established *Functional Academics* or *Learning*. The Appellant was tested in the school system (Exhibit D-30) using the ABES, a test with similar scoring and subdomains as those on the ABAS-3. The Appellant's ABES results from April 2008 (Exhibit D-30), the most reliable document with test results from the Appellant's developmental period, show no standard scores in an eligible score range for any subdomain.

Without eligible test scores, no amount of narrative regarding the Appellant's adaptive functioning within the developmental period can meet the policy requirement for both test scores and narrative. However, some documents with narratives of the Appellant's adaptive functioning before age 22 do not align with test results which, at times, were the lowest possible results. School records of the Appellant included a March 2010 (Exhibit D-32) Individualized Education Program from [redacted] County Schools. This document noted the Appellant was in the Community Work Base Program and was working at [redacted] at the time. It was noted (Exhibit D-32), "[Appellant] can work independently and has great personal skills. [Appellant] performs various job duties at [redacted]. Some of the job duties that [the Appellant] performs are food preparation, stocking of napkins, utensils, cleaning of tables, and general custodial duties…" Many documents from the developmental period do not include any narrative descriptions of the Appellant's adaptive functioning. Testimony was offered to describe the Appellant's adaptive functioning after the developmental period, which noted the Appellant's poor understanding of money and the value of money, his difficulties with counting change, his inability to "read people" or understand social boundaries, and his safety issues stemming from his poor social skills.

The Appellant currently resides at Mildred Mitchell Bateman Hospital (MMBH), and the staff that regularly offer services to the Appellant testified on his behalf. [redacted] is a licensed and board-certified psychiatrist and the Chief Medical Officer at MMBH. [redacted] maintains a unit within MMBH intended for individuals with a diagnosis of Intellectual Disability or Autism Spectrum Disorder and contended that the Appellant should not be admitted to this unit within MMBH without such a diagnosis. The basis for denial in the Appellant's case is not diagnostic; his functionality must be established, both presently and in the developmental period. Although [redacted]

[redacted] expertise is noted, testimony speculating on the Appellant's functionality in the past cannot be substituted for documented test scores and narrative from the relevant time period.

[redacted] is employed with MMBH and testified he has known the Appellant for five to six years. [redacted] has a master's degree in psychology and has been the Appellant's therapist for over a year. [redacted] explained that individuals at MMBH are assigned safety ranks with levels from Level 1 to Level 3. The Appellant has fluctuated through these levels. It is unclear how or if these levels correspond to a specific measure of functionality required by policy to establish a substantial limitation in one subdomain (health and safety) of the major life area *Capacity for Independent Living*. School records are not designed with I/DD policy in mind, and do not necessarily correspond or convert from measurements intended for the school system to those required by I/DD policy to measure functionality.

No documentation from the Appellant's developmental period included relevant test scores showing substantial limitations, or deficits, in a minimum of three major life areas. Narratives cannot substitute for inadequate test scores. Information after the developmental period may not be substituted for inadequate information within the developmental period. The *Capacity for Independent Living* is proven as a major life area when at least three subdomains of the major life area are established; the subdomains are not major life areas on their own. The most reliable test instrument from the Appellant's developmental period showed ineligible scores in every domain. Without adequate documentation to meet the functionality component of overall eligibility, the Respondent must deny the Appellant's application for participation in the I/DD Waiver Program.

CONCLUSIONS OF LAW

1) Because I/DD policy requires both narrative descriptions and relevant test scores to establish major life areas for functionality, the Respondent must deny applications without relevant test scores.

2) Because I/DD policy requires concurrent substantial deficits manifested prior to age 22, the Respondent must deny applications that fail to establish functionality both in the present and within the developmental period.

3) Because the Appellant's test scores from his developmental period (prior to age 22) do not show substantial limitations in any major life area, the Appellant did not meet the functionality component of medical eligibility requirements for the I/DD Waiver Program.

4) Because the documentation submitted with the Appellant's application did not meet the functionality component, the Appellant did not demonstrate medical eligibility as a whole.

5) 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 May 2026.

_____

Todd Thornton
State Hearing Officer