



June 17, 2026

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDohS-BMS
ACTION NO.: 26-BOR-1940

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,

Eric L. Phillips
Certified State Hearing Officer
Member, State Board of Review

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

cc: BMS/PC&A/Acentra

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

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 26-BOR-1940

**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 June 11, 2026, on an appeal filed with the Board of Review on May 11, 2026.

The matter before the Hearing Officer arises from the March 13, 2026 decision by the Respondent to deny the Appellant's application for benefits and services under the Intellectual/Developmental Disabilities Waiver Program (I/DD).

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau of Medical Services. The Appellant appeared by her father and guardian ■. Appearing as a witness for the Appellant was ■ Case Manager. 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 - 513.6.3
- D-2 Notice of Decision dated March 13, 2026
- D-3 Independent Psychological Evaluation dated March 11, 2026
- D-4 Independent Psychological Evaluation dated December 15, 2025
- D-5 Notice of Decision dated January 8, 2026
- D-6 Individualized Education Program dated August 23, 2023
- D-7 Independent Psychological Evaluation for WVCSED dated July 14, 2025

- D-8 Child and Adolescent Functional Assessment Scaled dated April 28, 2025
- D-9 Forensic Psychological Evaluation dated November 6, 2023
- D-10 Letter from [REDACTED], dated March 4, 2021
- D-11 Independent Psychological Evaluation for WVCSED dated April 21, 2022

Appellant's Exhibits:

None

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, through her guardian, applied for the Respondent's Intellectual and Developmental Disabilities Waiver (IDD) program.
- 2) The Appellant was 20 years-old at the time of application.
- 3) On December 15, 2025, an Independent Psychological Evaluation (IPE) (Exhibit D-4), a requirement of the application process, was completed with the Appellant.
- 4) The Appellant was diagnosed with Unspecified Neurodevelopmental Disorder, Tourette's Disorder, Persistent Depressive Disorder, Unspecified Anxiety Disorder, Borderline Intellectual Functioning and Trauma and Stressor-Related Disorder.
- 5) On January 8, 2026, the Respondent issued a Notice of Decision (Exhibit D-5) informing the Appellant that her application for I/DD services had been denied because she failed to meet the diagnostic criteria. Specifically, the notice documents that the initial waiver application was denied because "documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver Program of Intellectual Disability or a Related Condition which is Severe. Mental Illness as a Primary Diagnosis is specifically excluded for eligibility. Furthermore, for Autism Spectrum Disorder to be considered a Severe Related Condition it must be diagnosed at level 3.
- 6) The Notice of Decision (Exhibit D-5) afforded the Appellant the right to a second psychological evaluation at the Respondent's expense if the request was exercised within sixty calendar days of the decision.
- 7) The Appellant exercised her right to a second psychological evaluation.
- 8) On March 11, 2026, the Appellant completed an additional IPE with a different evaluating psychologist. (Exhibit D-3)

- 9) The Appellant was diagnosed with Autism Spectrum Disorder Level 1, Major Depressive Disorder, Generalized Anxiety Disorder, Tourette's Disorder and Borderline Intellectual Functioning. (Exhibit D-3)
- 10) On March 13, 2026, the Respondent issued an additional Notice of Decision (Exhibit D-2) informing the Appellant that her application for I/DD services had been denied because she failed to meet the diagnostic criteria. Specifically, the notice documents that the initial waiver application was denied because "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.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that 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.

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.

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.

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

Policy requires that an applicant for IDD Waiver program services have written documentation that they meet eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of the IPE report completed by a member of the Independent Psychological Network. The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the MECA to determine applicant eligibility for the I/DD Waiver Program. The MECA determines if the information provided aligns with the policy criteria for

establishing Medicaid IDD Waiver eligibility. The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding about the Appellant's I/DD Waiver eligibility.

To be determined eligible for the I/DD Waiver program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment and the requirement of ICF/IID level of care. Eligibility is established for the diagnostic criteria when an individual presents 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.

The Respondent denied the Appellant's application for failure to meet the diagnostic criteria. The Respondent contends that information concerning the Appellant's diagnosis of Autism Spectrum Disorder Level 1, a related condition under program guidelines, failed to demonstrate a severe and chronic disability. The Respondent must prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic eligibility standards.

Kerri Linton, the Respondent's witness, testified that the Appellant failed to meet the diagnostic criteria due to her diagnosis of Autism Spectrum Disorder failing to meet the severity criteria. The Appellant's diagnosis of Autism Spectrum Disorder is considered a related condition under program guidelines; however, the condition must be considered severe and chronic. Ms. Linton indicated that in order to meet the severity criteria, an Autism Spectrum Disorder diagnosis must be rated at a Level 3.

On December 15, 2025, the Appellant completed an IPE with [REDACTED]. During the evaluation, the Appellant was administered a Weschler Adult Intelligence Scale IV, in which the Appellant achieved a Full-Scale Intellectual Quotient of 79 which is considered in the Borderline Range of functioning. A Wide Range Achievement Test was administered in which the Appellant obtained the following scores: Math 72, Spelling 65, Word Reading 78, Sentence Comprehension 92 and Reading Composite 83. The Descriptive Categories ranged the Appellant from Average to Extremely Low. Lastly, The Gilliam Autis Rating Scale Third Edition was administered in which the Appellant scored an Autism Index of 108 with a very likely probability of Autism Spectrum Disorder. Based on the issued diagnoses outlined in the IPE, the Respondent denied the Appellant's application (Exhibit D-5) because she failed to present an eligible diagnosis of an Intellectual Disability or a related condition which is severe.

The Appellant exercised her right to a second medical opinion and completed an additional IPE with attending psychologist [REDACTED] on March 11, 2026. The attending psychologist administered a Childhood Autism Rating Scale-Second Edition in which Appellant achieved a total score of 34.0. The IPE documents [REDACTED] obtained a total score of 34.0, which places her in the severity group of Mild to Moderate Symptoms of an Autism Spectrum Disorder. [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder Level 1.

The Appellant's representatives and witnesses provided testimony revealing their concerns with the Appellant regarding her independent living skills. The Appellant's witness indicated that the Appellant presents well but requires a "reteaching" of skills. Testimony revealed that the

Appellant has no concept of danger and her representatives fear for her safety. Testimony indicated that the Appellant has serious mental health issues and has been previously placed in a detention center. Testimony indicated that the Appellant may never be able to live on her own with assistance and constant supervision.

The Appellant presented a diagnosis of Autism Spectrum Disorder, a related condition under the program; however, the diagnosis was assessed at a Level 1. To be determined eligible, an Autism Spectrum Disorder diagnosis must be considered severe and chronic. Because the documentation did not establish the presence of a severe related condition, the Appellant failed to meet the diagnostic criteria. Whereas the Appellant did not meet the diagnostic criteria for the I/DD Waiver Program, the Respondent's decision to deny the Appellant's application is affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.
- 2) Presented documentation failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or a related condition, which is severe, that manifested during the developmental period of prior to age 22.
- 3) The Appellant does not meet the diagnostic criteria for services under the I/DD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant's application for services under the I/DD Waiver Program.

ENTERED this ____ day of June 2026.

Eric L. Phillips
Certified State Hearing Officer