WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted]

Appellant,

v. **Action Number: 26-BOR-2618**

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. This fair hearing was convened on September 24, 2026, on an appeal filed with the Board of Review on August 28, 2026.

The matter before the Hearing Officer arises from the July 19, 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 Charley Bowen, consulting psychologist for the Bureau of Medical Services. The Appellant was represented by her parents [redacted] 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 July 15, 2026
D-3 Independent Psychological Evaluation dated July 9, 2026
D-4 [redacted] Children's Cognitive Assessment dated July 25, 2023

Appellant's Exhibits:

A-1 Hearing Summary from Appellant's Father
A-2 Hearing Summary from Appellant's Mother

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 parents, applied for the Respondent's Intellectual and Developmental Disabilities Waiver program. (I/DD)

2) The Appellant was 8 years old at the time of application.

3) On July 9. 2026, an Independent Psychological Evaluation (IPE) (Exhibit D-3), a requirement of the application process, was completed with the Appellant and her mother.

4) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, and Language Disorder. (Exhibit D-3)

5) The Appellant was awarded self-care and language (receptive or expressive) as substantial adaptive deficits.

6) On July 15, 2026, , the Respondent issued a 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 and functionality criteria. Specifically, the notice documents the initial waiver application was denied because the documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe nor reflect the need for an ICF Level of Care. Additionally, documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations inf the following major life areas: learning, mobility, self-direction and capacity for independent living.

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 I/DD 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 I/DD 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 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 and functionality criteria. The Respondent contends that information concerning the Appellant's diagnosis of Autism Spectrum Disorder Level 2, a related condition under program guidelines, failed to demonstrate a severe and chronic disability. Additionally, the information in the IPE failed to support the presence of substantial adaptive deficits in three or more of the major life areas identified for I/DD eligibility. The Respondent must prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic and functionality eligibility standards.

Charley Bowen, the Respondent's witness testified that the Appellant failed to meet the diagnostic criteria because her diagnosis of Autism Spectrum Disorder, Level 2, did not meet the severity criteria. The Appellant's diagnosis of Autism Spectrum Disorder Level 2 is considered a related condition under program guidelines; however, the condition must be considered severe and

chronic. Mr. Bowen indicated that in order to meet the severity criteria, an Autism Spectrum Disorder diagnosis must be rated at Level 3 or higher. Additionally, Mr. Bowen indicated that the Appellant was awarded substantial adaptive deficits in the areas of self-care and receptive or expressive language but failed to meet deficits in three or more of the six major life areas.

On July 9, 2026, the Appellant and her mother completed an IPE with [redacted], M.S. The IPE notes the Appellant's need for assistance with all aspects of self-care and her difficulties understanding complex questions. As part of the IPE, the Appellant was administered an Adaptive Behavior Assessment System III as measure of his adaptive behavior. The information supplied from the ABAS III was provided by the Appellant's mother. Mr. Bowen indicated that scores of one or two were considered eligible scores on the administered test; however, eligible scores must be accompanied by narrative descriptions to support the scores. The Appellant received eligible scores in the areas of communication, functional academics and self-care. The Appellant received eligible scores in home living and leisure but failed to meet a total of three areas for a deficit to be awarded in Capacity for Independent Living. Mr. Bowen indicated that deficits were awarded in the areas of self-care and language; however, a deficit was not awarded in learning because narrative descriptions under functional learning revealed that the Appellant's reading, spelling, and math skills are at grade level.

Additionally, the attending psychologist administered a Childhood Autism Rating Scare (CARS-3) in which the Appellant achieved a score of 46. The psychologist noted in the IPE falls in the Mild to Moderate symptoms of Autism Spectrum Disorder.

The Appellant's parents provided testimony concerning their daughter's difficulty in the functionality areas of the program. They cited the Appellant's difficulties in self-care, self-direction, language and learning. Specifically, they noted the Appellant's social awareness as it relates to safety and the Appellant's requirement for constant supervision. The Appellant's mother indicated issues related to the Appellant's learning and academics purporting the Appellant's need for simplified directions and her ability to perform well in a highly structured environment.

As part of the Appellant's parent's testimony, they offered no contention to the diagnostic criteria or the level of Autism in which the Appellant has been diagnosed.

Based on a review of evidence, the Appellant presented a diagnosis of Autism Spectrum Disorder, a related condition under the program; however, the diagnosis was assessed at a Level 2. To be determined eligible, an Autism Spectrum Disorder diagnosis must be considered severe and chronic. Additionally, the Appellant failed to present substantial functional deficits in three or more of the rated life areas regarding functionally which were supported by relevant tests scores and narrative descriptions. Because the documentation did not establish the presence of a severe related condition, the Appellant failed to meet the diagnostic and functionality criteria. Whereas the Appellant did not meet the diagnostic and functionality 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) Presented documentation failed to establish that the Appellant presented functional deficits of at least three substantial adaptive deficits out of the six major life areas.

4) The Appellant does not meet the diagnostic criteria for services under the I/DD Waiver Program.

5) The Appellant does not meet the functionality 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 September 2026.

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Eric L. Phillips
State Hearing Officer