WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted] A PROTECTED INDIVIDUAL,

Appellant,

v. **Action Number: 26-BOR-2434**

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 2, 2026.

The matter before the Hearing Officer arises from the Respondent's April 29, 2026 decision to deny the Appellant's eligibility for the Medicaid Intellectual/Developmental Disabilities Wavier (I/DD) program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation and Assessment (PC&A). Observing on behalf of the Respondent was Crystal Dotson, PC&A. The Appellant was represented by [redacted] her guardian. All witnesses were placed under oath, and the following documents were admitted into evidence.

Department's Exhibits:
D-1 Hearing Exhibit Checklist
Bureau for Medical Services (BMS) Chapter 513 excerpts
D-2 DoHS Notice, dated April 29, 2026
D-3 Independent Psychological Evaluation (IPE), dated April 9, 2026
D-4 Independent Medical Evaluation, dated September 8, 2025

Appellant's Exhibits:
A-1 Social Security Administration letter, dated March 23, 2026

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) On April 29, 2026, the Respondent issued a notice advising the Appellant she was ineligible for the Medicaid I/DD Waiver program because the documentation submitted for review did not include records from the developmental period to establish that the current level of functioning was present before the age of 22. (Exhibit D-2)

2) The Respondent's April 29, 2026 decision was based on the review of "4/9/26 IPE; 9/8/25 Medical Evaluation." (Exhibit D-2)

3) The Appellant has been disabled for Social Security Administration purposes since she was 18 years old due to an intellectual disability. (Exhibit A-1)

4) On April 9, 2026, Licensed Psychologist [redacted] completed an Independent Psychological Evaluation (IPE) with the Appellant. (Exhibit D-3)

5) [redacted] considered information provided by [redacted], the Appellant's brother. (Exhibit D-3)

6) The Appellant was 74 years old at the time of the IPE. (Exhibit D-3)

7) The Appellant's Adult Protective Services (APS) guardian Ms. Ellis and another APS staff member accompanied the Appellant during the IPE. (Exhibit D-3)

8) [redacted] considered the diagnostic and testing results of a psychological evaluation completed on September 8, 2025, by [redacted] Ph.D. [redacted] (Exhibit D-3)

9) [redacted] attempted to administer a Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-V), Test of Non-Verbal Intelligence-Fourth Edition (TONI4), and Wide-Range Achievement Test-Fifth Edition (WRAT5) but the Appellant was unable to answer any questions. (Exhibit D-3)

10) [redacted] administered an Adult Behavior Assessment System-Third Edition (ABAS-3) which demonstrated scaled scores of 1 in all adaptive skill areas. (Exhibit D-3)

11) The Appellant has lived independently on her family's property and is checked on by various family members daily. (Exhibit D-3)

12) The Appellant is capable of tidying her home and fixing microwavable meals. (Exhibit D-3)

13) The Appellant's ability to take care of herself has significantly diminished over the past year. (Exhibit D-3)

14) [redacted] diagnosed the Appellant with Moderate Intellectual Disability (by previous report), and Unspecified Neurocognitive Disorder. (Exhibit D-3)

15) [redacted] *prognosis* stated, "[redacted] will likely require assistance and ongoing supervision to maintain her safety and meet her basic needs."

16) On September 8, 2025, [redacted] conducted an Independent Medical Evaluation with the Appellant. (Exhibit D-4)

17) [redacted] administered a Peabody Picture Vocabulary Test, Fifth Edition (PPVT-5), Cognistat 2011, Bender Gestalt Visuo-Motor Test, and Lawton Instrumental Activities of Daily Living Scale (IADL). (Exhibit D-4).

18) [redacted] considered information from a prior evaluation completed on December 16, 2023. (Exhibit D-4)

19) [redacted] diagnosed the Appellant with Moderate Intellectual Disability and Unspecified Impulse Control Disorder likely due to executive functioning deficits. (Exhibit D-4)

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 400.5.2 ***Intellectual and Developmental Disabilities Waiver*** provides that the I/DD Waiver program is West Virginia's Home and Community Based Services program for individuals with intellectual and/or developmental disabilities that are at least three years of age. The I/DD Waiver program provides services based on a person's annual functional assessment.

BMS Manual § 513.6.1.1 ***Initial Eligibility Determination Process*** provides that the applicant is given with a list of Independent Psychologists (IP) in the Independent Psychologist Network (IPN) trained by the MECA who are available within the applicant's geographical area. The applicant chooses a psychologist in the IPN and contacts the IP to schedule the appointment within 14 days.

The IP is responsible for completing an Independent Psychological Evaluation (IPE) that includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is utilized by the MECA to make a medical eligibility determination.
Any applicant denied medical eligibility may re-apply to the Medicaid I/DD Waiver program at any time.

BMS Manual § 513.6.2 ***Initial Medical Eligibility*** provides:

> 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 ….

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 [Medicaid I/DD Waiver] 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 [Medicaid 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

BMS Manual § 513.6.2.1 *Diagnosis* provides:

The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested before age 22 or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

Examples of related conditions that may, if severe and chronic in nature, make an individual eligible for the IDDW 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 a diagnosis of intellectual disability or a severe related condition with associated concurrent adaptive deficits must also 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 under Section 513.6.2.2 *Functionality*.

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:

> *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 § 456.370(b) *Medical, psychological, and social evaluations* provides that 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.

Code of Federal Regulations 42 CFR § 456.372 *Medicaid agency review of need for admission* provides that the Medicaid agency or its designee must evaluate each applicant's need for admission by reviewing and assessing the evaluations required by § 456.370.

DISCUSSION

The Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation failed to establish the presence of an eligible diagnosis with concurrent substantial deficits manifested before age 22. During the hearing the Appellant's representative argued she was unable to obtain sufficient records from the Appellant's developmental period. The Appellant's representative argued that special consideration should be given to the Appellant's circumstances to qualify her for the Medicaid I/DD Waiver program.

Psychological Consultation and Assessment (PC&A) is the Respondent's Medical Eligibility Contracted Agent (MECA). PC&A is responsible for determining an applicant's eligibility for the Medicaid I/DD Waiver program by reviewing the IPE report. The MECA does not have the authority to change the information submitted for review and can only determine if the provided information aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility.

Clinical conclusions regarding the Appellant's diagnosis and severity cannot be made by the Hearing Officer. The Board of Review cannot judge the policy or grant exceptions to the policy, and can only determine if the MECA followed the policy when deciding the Appellant's Medicaid I/DD Waiver program eligibility based on the diagnosis and condition severity results of the submitted IPE and corroborated by the submitted information.

To be eligible for the Medicaid I/DD Waiver program, the Appellant must meet the medical eligibility criteria in each category: *diagnosis, functionality, need for active treatment,* and *requirement of ICF/IID Level of Care*. According to the policy, the eligible condition and concurrent substantial deficits must be severe, chronic, and manifested before age 22. The Respondent was required to base the Appellant's I/DD Waiver program eligibility decision on an IPE that corroborates the Appellant's eligible diagnosis and concurrent substantial deficits.

While the submitted evidence verified the Appellant had a potential qualifying diagnosis since age 18, the criteria for establishing Medicaid I/DD Waiver program eligibility is different than the criteria for establishing a disability through the Social Security Administration. The submitted evidence revealed that the Appellant's functioning has declined over time. The submitted evidence did not verify that the Appellant's diagnosis resulted in at least three concurrent substantial deficits manifested before age 22. Because the evidence failed to verify that at least three substantial deficits related to the Appellant's intellectual developmental disability diagnosis were manifested before the age of 22, the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver program.

Further, to establish the need for ICF admission, the federal regulations require the psychological evaluation to include a provider recommendation for ICF admission. While Ms. Pammer's prognosis stipulated that the Appellant would likely require assistance and ongoing supervision to maintain her safety and meet her basic needs, a specific recommendation for ICF admission was not included in the IPE.

CONCLUSIONS OF LAW

1) To be eligible for the Medicaid I/DD Waiver program, the applicant must meet the medical eligibility criteria in each category: *diagnosis, functionality, need for active treatment,* and *requirement of ICF/IID Level of Care*.

2) To establish the presence of an eligible diagnosis, the applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested before age 22, or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

3) The preponderance of evidence revealed that the Appellant had a diagnosis of moderate intellectual disability manifested before age 22; however, the submitted evidence did not prove that before age 22, the Appellant had at least three concurrent substantial deficits related to her diagnosis.

4) Because the evidence failed to verify that at least three substantial deficits related to the Appellant's intellectual developmental disability diagnosis were manifested before the age of 22, the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant eligibility for the Medicaid I/DD Waiver program.

ENTERED this 9th day of September 2026.

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Tara B. Thompson, MLS
Certified State Hearing Officer