WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted] A PROTECTED INDIVIDUAL,

Appellant,

v. **Action Number: 26-BOR-2589**

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 23, 2026.

The matter before the Hearing Officer arises from the August 7, 2026, decision by the Respondent to deny nursing facility placement.

At the hearing, the Respondent appeared by Terry McGee, Program Manager for Long-Term Care Facilities, Bureau for Medical Services. Appearing as a witness for the Respondent was Melissa Grega, Nurse Reviewer, Acentra Health. The Appellant was represented by his sister, [redacted] The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Psychological Consultation & Assessment, Inc., PASRR Level II Desk Review dated August 7, 2026
D-2 Level II (MI/MRScreen) dated August 7, 2026
D-3 Pre-Admission Screening dated July 20, 2026
D-4 Acentra Health Policy Chapter 514.5

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 has been a resident of [redacted] Healthcare Center, a long-term care facility, since February 2024.

2) The Appellant underwent a Pre-Admission Screening (PAS) on July 20, 2026, to evaluate his medical eligibility for the Long-Term Care Medicaid Program (Exhibit D-3).

3) The Appellant received 11 functional deficits on the July 20, 2026, PAS and was determined medically eligible for a nursing facility level of care (Exhibit D-3).

4) Since the Appellant has an intellectual disability and mental health disorders, the Respondent completed a Pre-Admission Screening and Resident Review (PASRR) Level II Desk Review of the Appellant's case (Exhibit D-1)

5) Charley Bowen, Clinical Consultant for Psychological Consultation & Assessment, Inc., completed the Desk Review and determined that the Appellant appears to meet criteria for an Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) level of care (Exhibit D-1).

6) The ICF/IID setting is the recommended placement for the Appellant as it appears the Appellant could benefit from habilitative treatment (Exhibit D-1).

7) The Respondent determined that the Appellant should not be placed in a nursing home through West Virginia Medicaid due to his need for specialized services and denied nursing facility placement during the Level II review (Exhibits D-1 and D-2).

8) The Respondent sent the Appellant a Notice of Decision on August 7, 2026, informing him that nursing facility placement was denied based on the results of the Level II review.

9) The July 20, 2026, PAS does not indicate that the Appellant has an intellectual disability but lists a related condition of traumatic brain injury. However, there was no dispute about the presence of an intellectual disability during the hearing and no dispute with information contained in the PASRR Level II Desk Review concerning intellectual disability (Exhibits D-1 and D-3).

APPLICABLE POLICY

42 Code of Federal Regulations 483.126:

§ 483.126 Appropriate placement.

Placement of an individual with MI or IID in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services provided by or arranged for by the State.

42 Code of Federal Regulations 483.130:

§483.130 PASARR Determination Criteria:

(a) ***Basis for determinations.*** Determinations made by the State mental health or intellectual disability authority as to whether NF level of services and specialized services are needed must be based on an evaluation of data concerning the individual, as specified in paragraph (b) of this section.

(b) ***Types of determinations.*** Determinations may be—

(1) Advance group determinations, in accordance with this section, by category that take into account that certain diagnoses, levels of severity of illness, or need for a particular service clearly indicate that admission to or residence in a NF is normally needed, or that the provision of specialized services is not normally needed; or

(2) Individualized determinations based on more extensive individualized evaluations as required in § 483.132, § 483.134, or § 483.136 (or, in the case of an individual having both IID and MI, §§ 483.134 and 483.136).

(c) ***Group determinations by category.*** Advance group determinations by category developed by the State mental health or intellectual disability authorities may be made applicable to individuals by the NF or other evaluator following Level I review only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the category established by the State authorities (see § 483.132(c)). Sources of existing data on the individual that could form the basis for applying a categorical determination by the State authorities would be hospital records, physician's evaluations, election of hospice status, records of community mental health centers or community intellectual disability or developmental disability providers.

(d) ***Examples of categories.*** Examples of categories for which the State mental health or intellectual disability authority may make an advance group determination that NF services are needed are—

(1) Convalescent care from an acute physical illness which—

(i) Required hospitalization; and

(ii) Does not meet all the criteria for an exempt hospital discharge, which is not subject to preadmission screening, as specified in § 483.106(b)(2).

(2) Terminal illness, as defined for hospice purposes in § 418.3 of this chapter;

(3) Severe physical illnesses such as coma, ventilator dependence, functioning at a brain stem level, or diagnoses such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, and congestive heart failure which result in a level of impairment so severe that the individual could not be expected to benefit from specialized services;

(4) Provisional admissions pending further assessment in cases of delirium where an accurate diagnosis cannot be made until the delirium clears;

(5) Provisional admissions pending further assessment in emergency situations requiring protective services, with placement in a nursing facility not to exceed 7 days; and

(6) Very brief and finite stays of up to a fixed number of days to provide respite to in-home caregivers to whom the individual with MI or IID is expected to return following the brief NF stay.

(e) ***Time limits.*** The State may specify time limits for categorical determinations that NF services are needed and in the case of paragraphs (d)(4), (5) and (6) of this section, must specify a time limit which is appropriate for provisional admissions pending further assessment and for emergency situations and respite care. If an individual is later determined to need a longer stay than the State's limit allows, the individual must be subjected to an annual resident review before continuation of the stay may be permitted and payment made for days of NF care beyond the State's time limit.

(f) The State mental health and intellectual disability authorities may make categorical determinations that specialized services are not needed in the provisional, emergency and respite admission situations identified in § 483.130(d)(4)-(6). In all other cases, except for § 483.130(h), a determination that specialized services are not needed must be based on a more extensive individualized evaluation under § 483.134 or § 483.136.

(g) ***Categorical determinations: No positive specialized treatment determinations.*** The State mental health and intellectual disability authorities must not make categorical determinations that specialized services are needed. Such a determination must be based on a more extensive individualized evaluation under § 483.134 or § 483.136 to determine the exact nature of the specialized services that are needed.

(h) ***Categorical determinations: Dementia and IID.*** The State intellectual disability authority may make categorical determinations that individuals with dementia, which exists in combination with intellectual disability or a related condition, do not need specialized services.

(i) If a State mental health or intellectual disability authority determines NF needs by category, it may not waive the specialized services determination. The appropriate State authority must also determine whether specialized services are needed either by category (if permitted) or by individualized evaluations, as specified in § 483.134 or § 483.136.

(j) ***Recording determinations.*** All determinations made by the State mental health and intellectual disability authority, regardless of how they are arrived at, must be recorded in the individual's record.

(k) ***Notice of determination.*** The State mental health or intellectual disability authority must notify in writing the following entities of a determination made under this subpart:

(1) The evaluated individual and his or her legal representative;

(2) The admitting or retaining NF;

(3) The individual or resident's attending physician; and

(4) The discharging hospital, unless the individual is exempt from preadmission screening as provided for at § 483.106(b)(2).

(l) ***Contents of notice.*** Each notice of the determination made by the State mental health or intellectual disability authority must include—

(1) Whether a NF level of services is needed;

(2) Whether specialized services are needed;

(3) The placement options that are available to the individual consistent with these determinations; and

(4) The rights of the individual to appeal the determination under subpart E of this part.

(m) ***Placement options.*** Except as otherwise may be provided in an alternative disposition plan adopted under section 1919(e)(7)(E) of the Act, the placement options and the required State actions are as follows:

(1) ***Can be admitted to a NF.*** Any applicant for admission to a NF who has MI or IID and who requires the level of services provided by a NF, regardless of whether specialized services are also needed, may be admitted to a NF, if the placement is appropriate, as determined in § 483.126. If specialized services are also needed, the State is responsible for providing or arranging for the provision of the specialized services.

(2) ***Cannot be admitted to a NF.*** Any applicant for admission to a NF who has MI or IID and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must not be admitted.

(3) ***Can be considered appropriate for continued placement in a NF.*** Any NF resident with MI or IID who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for specialized services, can continue to reside in the NF, if the placement is appropriate, as determined in § 483.126.

(4) ***May choose to remain in the NF even though the placement would otherwise be inappropriate.*** Any NF resident with MI or IID who does not require the level of services provided by a NF but does require specialized services and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the State must meet his or her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

(5) ***Cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents).*** Any NF resident with MI or IID who does not require the level of services provided by a NF but does require specialized services and who has resided in a NF for less than 30 consecutive months must be discharged in accordance with § 483.15(b) to an appropriate setting where the State must provide specialized services. The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his/her appeal rights under both PASARR and discharge provisions.

(6) ***Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents).*** Any NF resident with MI or IID who does not require the level of services provided by a NF and does not require specialized services regardless of his or her length of stay, must be discharged in accordance with § 483.15(b). The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

(n) ***Specialized services needed in a NF.*** If a determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for by the State while the individual resides in the NF.

(o) ***Record retention.*** The State PASARR system must maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR; and

(p) ***Tracking system.*** The State PASARR system must establish and maintain a tracking system for all individuals with MI or IID in NFs to ensure that appeals and future reviews are performed in accordance with this subpart and subpart E.

42 Code of Federal Regulations 483.132:

§ 483.132 Evaluating the need for NF services and NF level of care (PASARR/NF).

(a) ***Basic rule.*** For each applicant for admission to a NF and each NF resident who has MI or IID, the evaluator must assess whether—

(1) The individual's total needs are such that his or her needs can be met in an appropriate community setting;

(2) The individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required;

(3) If inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs in accordance with § 483.126; or

(4) If the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs in accordance with § 483.126, another setting such as an ICF/IID (including small, community-based facilities), an IMD providing services to individuals aged 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

(b) ***Determining appropriate placement.*** In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

(c) ***Data.*** At a minimum, the data relied on to make a determination must include:

(1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis);

(2) Evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and

(3) Functional assessment (activities of daily living).

(d) Based on the data compiled in § 483.132 and, as appropriate, in §§ 483.134 and 483.136, the State mental health or intellectual disability authority must determine whether an NF level of services is needed.

Bureau for Medical Services Policy Manual Chapter 514.5.4:

514.5.4 Medical Necessity (Level I)
All individuals admitted or requesting admission to a Medicaid certified nursing facility must be screened for the possible presence of a mental illness, and/or an Intellectual/Developmental Disability (I/DD). This review is identified as the Level I (PAS) evaluation. Any individual identified with the possible presence of mental health issues must be further evaluated in the Level II PASRR.

Bureau for Medical Services Policy Manual Chapter 514.5.5:

Pre-Admission Screening and Resident Review (PASRR) (Level II)
If the Level I evaluation found the possible presence of mental illness and/or I/DD, further evaluation of the individual must be completed to obtain a definitive diagnosis and the need for specialized services for any mental health condition. This evaluation is identified as a Level II evaluation and must be completed by an individual identified by the State as an approved Level II evaluator. All Level II evaluators are either licensed psychologists or board-certified psychiatrists.

It is the responsibility of the facility in which the PAS is completed to arrange for the Level II evaluation. This evaluation must be completed, including a report of the mental health status and whether specialized services are needed, within seven to nine calendar days following the referral. The Level II must be completed prior to the individual's admission into a nursing facility. Upon completion of the evaluation, both the referring entity and the PASARR Level II evaluator must provide the complete mental health evaluation and the original Level I evaluation to the receiving nursing facility. Additionally, the results of the evaluation shall be sent on the applicable forms to the contracted agent. 42 CFR 483.106 (ii) states "In cases of transfer of a resident with mental illness or I/DD from a nursing facility to a hospital or to another nursing facility, the transferring nursing facility is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports accompany the transferring resident." This regulation applies to all residents of nursing facilities.

Repeat Level II evaluations are necessary when there is an acute exacerbation of the mental illness resulting in an inpatient admission to a psychiatric facility/psychiatric unit. The discharging facility must complete a new PAS, assuring that #31 (Has an individual ever received services from an agency serving persons with mental retardation/developmental disability and/or mental illness?) on the PAS is completed accurately, in which a Level II will be triggered.

Bureau for Medical Services Policy Manual Chapter 514.5.6:

514.5.6 Specialized Services for Intellectual/Developmental Disability (I/DD)
Specialized services for an individual identified as I/DD are a continuous program for an individual requiring aggressive, consistent implementation of a program of specialized and generic training, treatment, health and related services developed by an Interdisciplinary Team (IDT) that is directed toward:

- The acquisition of the behaviors necessary for the individual to function with as much self- determination and independence as possible; and
- The prevention or deceleration of regression or loss of their current optimal functional status.

These services are generally provided in an intermediate care facility for persons with I/DD or a related condition. If the resident is presently residing in a nursing facility when the Level II is completed and the need for specialized services for I/DD is indicated, and the responsible party refuses this recommendation, this refusal must be documented in the resident's record and readdressed with the responsible party on a continuing quarterly basis or until a Level II evaluation recommends otherwise.

Bureau for Medical Services Policy Manual Chapter 514.5.8:

514.5.8 Fair Hearing Process
A PAS form will be completed to determine Medicaid medical eligibility for nursing facility placement. If the PAS results show the member does not meet Medicaid medical eligibility after being reviewed by the appropriate UMC, the member or their responsible party has the right to request a Fair Hearing. During the appeal, the resident may choose to remain at the facility. If the resident is a Medicaid member at the time of appeal, the facility will receive continued payment during the appeal process. After the hearing, the hearing officer will issue the decision, in writing, to the State, the nursing facility and member/responsible party. This letter, from the hearing officer, will have the effective date of the decision. If the decision is to uphold the denial for Medicaid medical eligibility, the facility will have 35 days of continued Medicaid payment in order to account for mailing time.

At the beginning of the 35-day discharge period, the facility will issue a 30-day discharge letter to the resident so that the facility will be able to conduct a safe and

orderly discharge while receiving continued payment, in accordance with 42 CFR 483.15.

DISCUSSION

Policy states that placement of an individual with a mental impairment or intellectual disability in a nursing facility may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the nursing facility to which the individual is admitted either through nursing facility services alone or, where necessary, through nursing facility services supplemented by specialized services provided by or arranged for by the State. If a Level I PAS reveals the possible presence of mental illness and/or an intellectual disability, further evaluation of the individual must be completed to obtain a definitive diagnosis and the need for specialized services. Specialized services for an individual identified as I/DD are a continuous program for an individual requiring aggressive, consistent implementation of a program of specialized and generic training, treatment, health and related services developed by an Interdisciplinary Team. These services are generally provided in an intermediate care facility for persons with I/DD or a related condition. If the resident is presently residing in a nursing facility when the Level II is completed and the need for specialized services for I/DD is indicated, and the responsible party refuses this recommendation, this refusal must be documented in the resident's record and readdressed with the responsible party on a continuing quarterly basis or until a Level II evaluation recommends otherwise.

The Appellant was found to be ineligible for nursing facility placement because the Level II reviewer determined that he requires specialized services due to his intellectual disability.

During the hearing, the Appellant's sister, [redacted] testified that she does not oppose the Appellant moving to an ICF/IID facility to address his specialized care needs. [redacted] stated that she was working with a social worker at [redacted] Healthcare Center in 2025 to facilitate the Appellant's move; however, that worker is no longer employed at the facility and the facility has obtained new staff. [redacted] stated that she would like the Appellant to be placed in a facility within visiting distance for his family.

Terry McGee, Program Manager for Long-Term Care Facilities, stated that he would provide additional information to the Appellant concerning the placement process. Mr. McGee indicated that the facility would be required to work with the Appellant's representative to help locate a placement for the Appellant before he could be discharged.

As a Level II evaluation indicates that the Appellant requires specialized services that cannot be provided in a nursing facility, and the Appellant's representative has not refused the recommendation, the Respondent's decision to deny nursing facility placement is affirmed.

CONCLUSIONS OF LAW

1) The placement of an individual with a mental impairment or intellectual disability in a nursing facility is considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and the individual's needs for treatment do not exceed the level of services which can be delivered in the nursing facility.

2) The Appellant has an intellectual disability and mental health conditions.

3) A PASRR Level II evaluation was completed for the Appellant based on information concerning his intellectual disability and mental health conditions.

4) The Level II evaluator identified the Appellant's need for specialized services for his intellectual disability that could not be provided at the nursing home and, as a result, denied nursing facility placement.

5) The Appellant's representative has not refused the recommendation.

6) As the Appellant's need for specialized services cannot be met in a nursing facility, the Respondent's decision to deny nursing facility placement is affirmed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the action of the Respondent to deny nursing facility placement.

ENTERED this 30th day of September 2026.

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Pamela L. Hinzman
State Hearing Officer