WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted], A Protected Individual,

Appellant,

v. **Action Number: 26-BOR-2530**

WV 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 originally convened on September 23, 2026, but upon the Appellant's request and without objection from the Respondent, reconvened on October 14, 2026.

The matter before the Hearing Officer arises from the June 22, 2026 decision by the Respondent to deny the Appellant's application for benefits and services under the Intellectual Developmental Disabilities (I/DD) Waiver program.

At the hearing, the Respondent appeared by Charley Bowen, Psychological Consultation and Assessment (PC&A). The Appellant was represented by [redacted] Bureau of Social Services. Appearing as witnesses for the Appellant were [redacted] Psychologist with [redacted] Hospital, Holly Pierce, Adult Protective Services, and Felicia Fetterman, Youth Services and Child Protective Services supervisor. 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 *et seq*.
- D-2 Notice of Decision dated June 22, 2026
- D-3 Independent Psychological Evaluation dated June 9, 2026
- D-4 Independent Psychological Evaluation dated October 7, 2025
- D-5 Notice of Decision dated November 10, 2025
- D-6 Psychological Evaluation dated July 7 and 9, 2025
- D-7 Independent Psychological Evaluation dated March 6, 2023
- D-8 Notice of Decision dated March 10, 2023

D-9 Notice of Eligibility Committee and/or Individualized Education Program Team Meeting dated February 15, 2023
D-10 Individualized Education Program [redacted] County Schools review date February 15, 2024
D-11 Personalized Education Plan (PEP) dated May 15, 2023
D-12 Psychological Evaluation dated April 24, 2017

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 applied for the I/DD Waiver program and underwent an Independent Psychological Evaluation (IPE) on June 9, 2026, administered by Kimberly Morton, M.S., a licensed psychologist. (Exhibit D-3)

2) During the June 2026 IPE, the Wechsler Abbreviated Scale of Intelligence-2nd Edition (WASI-II), an intellectual/cognitive achievement test, was administered to the Appellant where she scored a 73 under Full Scale IQ (FS IQ), borderline range of intellectual functioning. (Exhibit D-3)

3) During the June 2026 IPE, A Wide Range Achievement Test-5th Edition (WRAT-5), which tests functional academics, was administered resulting in the Appellant with scores over 55 in the tested areas. Scores of 55 or below are considered as eligible scores. (Exhibit D-3)

4) During the June 2026 IPE, the Adaptive Behavior Assessment System-3 (ABAS-3) test was used, which was rated by her youth service worker, [redacted] The Appellant was scored with one's in all except in the area of Communication where Ms. [redacted] scored the Appellant with a two. (Exhibit D-3)

5) The June 2026 IPE ABAS-3 scores were inconsistent with the narrative. (Exhibit D-3)

6) The June 2026 IPE narrative indicated the Appellant has the ability to do self-care but she is either defiant or needs reminders; the Appellant can effectively express her wants and needs verbally and typically does so; the Appellant is easily distracted and requires redirection and reminders with all tasks for self-direction; and in community use, the Appellant requires supervision at all times, has a general concept of danger, requires assistance to utilize appliances safely, has friends and enjoys swimming, being outside, and social media. (Exhibit D-3)

7) The Appellant has a history of mental health issues beginning at the age of 5 or 6. (Exhibit D-3)

8) The Appellant is currently in placement and receives psychiatric intervention and psychotropic medication. (Exhibit D-3)

9) The Appellant has a history of suicide attempts, cutting behaviors, beating self, and has been admitted to various hospitals

10) After the June 2026 IPE, Ms. Morton provided the Appellant with the following diagnoses: Autism Spectrum Disorder, Level 1, Requiring Support, with Intellectual Impairment, Borderline Intellectual Functioning, Posttraumatic Stress Disorder, Unspecified Anxiety Disorder, Oppositional Defiant Disorder, Moderate, Major Depressive Disorder, Recurrent, Moderate, and Specific Learning Disorder with impairment in Mathematics (by history). (Exhibit D-3)

11) Ms. Morton noted that the Appellant's performance in the June 2026 IPE tests "may be an underestimate of her actual intellectual abilities as she displayed difficulty focusing concentration, mildly deficient persistence and difficulty with sustained attention … If her mental health was better stabilized and ADHD [Attention Deficit Hyperactivity Disorder] was addressed with medication to improve focus, she may score 2 to 9 points higher on standardized IQ test instruments." (Exhibit D-3)

12) Ms. Morton recommended continued residential/psychiatric placement because the Appellant continues to exhibit moderate to severe maladaptive behavior on a daily basis. (Exhibit D-3)

13) On June 22, 2026, the Respondent issued a notice advising the Appellant she was ineligible for the I/DD Waiver program because the documentation submitted for review did not indicate an eligible diagnosis for the I/DD Waiver program nor did it reflect the need for an ICF level of care. (Exhibit D-2)

14) The Respondent relied on the following facts in its June 22, 2026 decision: June 9, 2026 IPE, October 7, 2025 IPE, November 10, 2025 Notice of Denial, July 7 and July 9, 2025 Psychological Evaluation, March 6, 2023 IPE, March 10, 2023 Notice of Denial, February 3, 2023 Hardy County Schools Notice of Eligibility Committee, February 15, 2023 HCS IPE, IEP Team Meeting, Memorandum of Conference, May 15, 2023 PEP, and April 24, 2017 Psychoeducational Evaluation. (Exhibit D-2)

15) Based on the totality of the information, the Respondent concluded that the Appellant did not currently have a diagnosis of Intellectual Disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits other than mental illness.

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 440.150(a)(2) ***Intermediate Care Facility (ICF/IID) services*** provided 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.

Code of Federal Regulations 42 CFR § 456.372 ***Medicaid agency review of need for admission*****:**

> The Medicaid agency or its designee must evaluate each applicant's need for admission by reviewing and assessing the evaluations required by § 456.370.

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 support.

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

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* of Intellectual Disability (ID) with concurrent substantial deficits manifested prior to age 22 or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22; *Functionality* of at least three substantial adaptive deficits out of the six identified major life areas; *Need for Active Treatment*; *Requirement of ICF/IID Level of Care*. Failure to meet any

one of the eligibility categories results in a denial of program services. 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 need the same level of care and services provided in an ICF/IID setting.

Charley Bowen, the Respondent's consulting psychologist from PC&A, testified that he reviewed the Appellant's previous testing results, along with the June 2026 IPE, in consideration of the Appellant's current application:

- July 2025, psychological evaluation which provided a diagnosis of Mild Intellectual Disability; Major Depressive Disorder, recurrent, moderate; Generalized Anxiety Disorder; and Other Specified Disruptive, Impulse-Control, and Conduct Disorder.
- October 2025, evaluation and diagnoses of Unspecified Disruptive, Impulse-Control, and Conduct Disorder, Major Depressive Disorder, Recurrent, Unspecified; Unspecified Trauma-and-Stressor-Related Disorder (provisional); Intellectual Disability, Mild; and Alleged Sexual Abuse and Neglect of Child.
- June 2024 WASI-II result of a FS IQ of 76 and diagnoses of Generalized Anxiety Disorder; PTSD; Oppositional Defiant Disorder, severe; Major Depressive Disorder, recurrent episode, severe; Specific Learning Disorder, with impairment in mathematics, severe; ADHD, combined type. Mr. Bowen noted that the June 2024 testing did not result in a diagnosis of Intellectual Disorder or a severe and chronic related condition.
- Although Mr. Bowen did not have a report conducted in February 2024, the June 2026 IPE examiner noted that the WASI-II was conducted, which resulted in a FS IQ of 76 and the examiner diagnosed the Appellant with Unspecified Disruptive, Impulse-Control, and Conduct Disorder. Again, no diagnosis of ID was given.

In reviewing the current IPE, Mr. Bowen noted that the WASI-II scored the Appellant with FS IQ of 73 (borderline range of intellectual functioning). The June 2026 WRAT-5 showed the Appellant scoring over 55 in the tested areas. Scores of 55 or below are considered eligible scores. The Appellant's June 2026 adaptive behavior was tested using the ABAS-3, which was rated by her youth service worker, [redacted]. The ABAS-3 scores were rated all one's except in the area of Communication where Ms. [redacted] scored the Appellant with a two. However, Mr. Bowen found that these scores were inconsistent with the narrative.

Mr. Bowen explained that the narratives indicated the Appellant has the ability to do self-care but she is either defiant or needs reminders. This is also indicated under self-direction in the narrative. Mr. Bowen testified that the need for reminders is not considered indicative for the need for active treatment. Mr. Bowen also noted that under receptive and expressive language, the narrative stated that the Appellant can effectively express her wants and needs verbally and typically does so. Under community use in the narrative, it was noted that the Appellant requires supervision at all times, has a general concept of danger, requires assistance to utilize appliances safely, has friends and enjoys swimming, being outside, and social media. Mr. Bowen determined that these narratives were inconsistent with the ABAS-3 scores given to the Appellant by Ms. [redacted]

Additionally, Mr. Bowen explained that the Appellant has been treated for mental health issues since the age of 5 or 6, which may affect test scores. The Appellant was 17 years old at the time of her current I/DD Waiver application. Nonetheless, Mr. Bowen explained although in the past

the Appellant had been determined to meet the diagnostic criteria, she failed to meet the functionality criteria needed for program eligibility. Thus, Mr. Bowen stated that based on the totality of the information, the Appellant failed to meet the diagnostic or functionality criteria for I/DD Waiver program eligibility. On June 22, 2026, the Respondent issued a notice of denial to the Appellant.

The Appellant's witness, [redacted], a psychologist at [redacted] Hospital, testified that in his review, all the documentation indicates that the Appellant has mild ID. Mr. [redacted] explained that he could not comment on the Appellant's functional abilities as [redacted] Hospital does not test for this. Mr. [redacted] stated that the functional ability scores rely on the child being able to initiate tasks and at the Hospital these scores would be unreliable because the child always has reminders and cues to accomplish tasks. Holly Pierce, witness for the Appellant, testified that she believes the Appellant has mild ID but needs "programming" to help with her activities of daily living and quality of life.

Policy requires that an applicant for I/DD Waiver program services have written documentation that all of the eligibility criteria have been met. 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 the Appellant's I/DD Waiver eligibility based on the diagnosis and condition severity results of the submitted IPE and corroborated by the submitted information.

The Respondent showed by a preponderance of evidence that the submitted documentation did not establish that the Appellant meet the eligibility criteria for program eligibility. Accordingly, the Respondent's decision to deny the Appellant's I/DD Waiver program application is affirmed.

CONCLUSIONS OF LAW

1) Pursuant to policy, an individual must meet all four of the listed criteria in order to receive services under the I/DD Waiver program.

2) The 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 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) Because the Appellant did not meet the medical eligibility requirements, the Respondent correctly denied the Appellant's application for 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 21st day of October 2026.

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Lori Woodward, Certified State Hearing Officer