WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted], A Protected Person,

Appellant,

v. **Action Number: 26-BOR-2829**

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 Person. 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 October 14, 2026, on an appeal filed with the Board of Review on September 22, 2026.

The matter before the Hearing Officer arises from the August 20, 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 Kerri Linton, Psychological Consultation and Assessment (PC&A). The Appellant was represented by his mother, [redacted]. Appearing as a witness for the Appellant was his grandmother, [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 *et seq*.
- D-2 Notice of Decision dated August 20, 2026
- D-3 Independent Psychological Evaluation dated August 19, 2026
- D-4 Confidential Psychoeducational Evaluation dated January 31, 2025

Appellant's Exhibits:
- A-1 Letter from [redacted] dated October 11, 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 August 20, 2026, the Respondent issued a notice advising the Appellant he was ineligible for the I/DD Waiver program because the documentation submitted for review did not indicate the need for an ICF level of care and did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility; specifically, in the areas of Self-Care, Self-Direction, Mobility, and Capacity for Independent Living. (Exhibit D-2)

2) The Appellant was a 10-year-old in the 5th grade at the time of the application.

3) On July 13, 2026, Christianne S. Connelly, Ph.D., a counseling psychologist, completed an Independent Psychological Evaluation (IPE) with the Appellant. (Exhibit D-3)

4) As part of the July 2026 IPE, Dr. Connelly considered the diagnostic and testing results of a psychological evaluation report dated February 26, 2025, which she conducted on January 31, 2025. (Exhibits D-3 and D-4)

5) During the July 2026 IPE, Dr. Connelly administered the following tests: Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), Adaptive Behavior Assessment System, 3rd Edition (ABAS-3) scored by the Appellant's mother and by the Appellant's teacher, and the Autism Spectrum Rating Scale (ASRS), completed by the Appellant's teacher. (Exhibit D-3)

6) The July 2026 WISC-V results showed the Appellant with a Full-Scale IQ of 54, which falls in the Exceptionally Low Range. (Exhibit D-3)

7) The July 2026 ASRS completed by the Appellant's teacher resulted in a Total Scale of 73, which lead to Dr. Connelly rating the Appellant's ASD at a Level 3. (Exhibit D-3)

8) The July 2026 ABAS-3 completed by the Appellant's mother resulted in an eligible score of 2 in Communication with other areas scoring over 4. The Appellant's teacher scores only resulted in an eligible score of 1 in community use, which is a sub-domain of capacity for independent living (CIL). (Exhibit D-3)

9) After the July 2026 IPE, Dr. Connelly provided the Appellant with the following diagnoses: Intellectual Developmental Disorder, Moderate, Autism Spectrum Disorder, Level 3, Requiring Very Substantial Support with Accompanying Language Impairment, Attention Deficit/Hyperactivity Disorder, Combined Presentation, Moderate (by history), Oppositional Defiant Disorder, Moderate, Encopresis, with Constipation and Overflow Incontinence. (Exhibit D-3)

10) In the July 2026 IPE, Dr. Connelly recommended that the Appellant be re-evaluated by a child psychiatrist for his mental health symptoms and to be referred for participation in the Children with Serious Emotional Disorders program. (Exhibit D-3)

11) The Respondent's representative conceded that the Appellant met the diagnostic eligibility criteria for the I/DD program.

12) The Appellant did not meet the functionality criteria needed for I/DD Waiver program eligibility as he was awarded a substantial functional deficit in the area of Learning and Receptive or Expressive Language. (Exhibits D-1 and D-2)

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 need 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.

To be eligible to receive IDDW services, an applicant must meet the medical eligibility criteria in each of the following categories:

- Diagnosis: Does the person have a diagnosis of an intellectual or development disability or a related condition which is severe?
- Functionality: Does the person have substantial adaptive deficits in three of the six major life areas (functionality) due to an IDD or related condition that manifested prior to the age of 22?
- Need for active treatment: Active treatment refers to aggressive, consistent implementation of a program of specialized and generic training, treatment and health services. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision and who do not require a continuous program of habilitation services.
- Requirement of ICF/IID Level of Care. Does the person require the level of care, services, supervision, monitoring, and training provided by an intermediate care facility for individuals with intellectual disability (IDF/IID)?

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

A deficiency in functionality must be met for IDDW eligibility. Functionality is defined as substantially limited functioning in three or more of the six major life areas as evidenced by standardized measures of adaptive behavior scores that are three standard deviations below the mean or less than one percentile when derived from non-ID normative populations or in the average range or equal to or below the 75th percentile rank when derived from ID normative populations. 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 evaluations, the IEP, occupational therapy evaluations, etc.

The six major life areas include:

- Self-care
- Receptive or expressive language (communication)
- Learning (functional academics)
- Mobility
- Self-direction
- Capacity for independent living. This major life area is determined to be met by substantial limitations in at least three of the following subdomains: home living, social skills, employment, health and safety, community, and leisure activities.

Functionality scores must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual professionally 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 independent psychologist for review.

513.6.2.3 Active Treatment

To be eligible for the IDDW program, the individual must meet the ICF/IDD level of care. The eligibility evaluation of the applicant must demonstrate:

- Need for intensive instruction, services, assistance, and supervision to learn new skills, maintain current level of skills, and increase independence in activities of daily living.
- Need for the same level of care and services that is provided in an ICF/IID institutional setting.

The applicant or legal representative will be informed of the right to choose between ICF/IID services and home and community-based services under the IDDW and informed of their right to a fair hearing in the event of an adverse decision.

DISCUSSION

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 that constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

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.

Kerri Linton, the Respondent's witness, testified that the Appellant met the diagnostic criteria for I/DD Waiver eligibility, however, the submitted documentation failed to show the Appellant met at least three substantial adaptive deficits of the six major life areas identified for I/DD eligibility for the functionality criteria. Specifically, it was noted that the documentation failed to show the

Appellant had substantial limitations in the major life areas of Self-Care, Self-Direction, Mobility, and Capacity for Independent Living (CIL).

In reviewing the July 2026 IPE's functionality assessments, Ms. Linton testified that the test scores were corroborated by the narratives. The Appellant is in 5th grade with an IEP and participates in special education courses. It was noted that the Appellant experiences behavioral and elopement issues at school. In reviewing the WRAT-5, an academic achievement test, Ms. Linton testified that the results showed that the Appellant fell in the Exceptionally Low range. However, Dr. Connelly, who administered the July 2026 IPE, concluded that the Appellant's scores did not suggest the possibility of a learning disorder. Additionally, Ms. Linton noted that the narrative regarding the Appellant's functional ability was consistent with the results on the ABAS-3 scored by both his mother and teacher.

During the hearing, testimony was provided by the Appellant's representative and witness regarding the Appellant's functional limitations. They cited the Appellant's difficulties in self-care, self-direction, safety, and communication. Specifically, they noted the Appellant's elopement issues as it relates to his safety and explained that the Appellant required constant supervision.

Although there is no doubt that the Appellant experiences many difficulties, to be eligible for the I/DD Waiver program, the documentation had to demonstrate that the Appellant had substantial functioning deficits related to an eligible diagnosis in at least three areas as corroborated by the IPE test scores and narrative. The Appellant failed to meet 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 that the Appellant met the functionality criteria for program eligibility, 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) The Respondent found that the Appellant met the diagnostic criteria for the I/DD Waiver program eligibility.

3) The documentation failed to establish that the Appellant presented functional deficits in at least three out of the six major life areas identified for I/DD Waiver program eligibility.

4) 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 20th day of October 2026.

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Lori Woodward, Certified State Hearing Officer