



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Cabinet Secretary**

**Ann Vincent-Urling
Interim Inspector General**

March 7, 2024



RE: [REDACTED] v. WVDohS
ACTION NO.: 24-BOR-1198

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Human Services. These same laws and regulations are used in all cases to ensure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: BMS/PC&A/ACENTRA

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**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

████████████████████,

Appellant,

v.

Action Number: 24-BOR-1198

**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 ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Office of Inspector General’s Common Chapters Manual. This fair hearing was convened on February 29, 2024, on an appeal filed January 25, 2024.

The matter before the Hearing Officer arises from the November 30, 2023 decision by the Respondent to deny the Appellant’s application for services under the I/DD Waiver program.

At the hearing, the Respondent appeared by Charlie Bowen, consulting psychologist for the Bureau of Medical Services. The Appellant appeared *pro se*. The Appellant’s witness included ██████████, Appellant’s mother. All witnesses were sworn 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 November 30, 2023
- D-3 Independent Psychological Evaluation dated November 15, 2023
- D-4 Medical Information from ██████████

Appellant’s Exhibits:

- A-1 Information from Office of Special Education- ██████████ Schools*

*This evidence was not provided for the Respondent’s review of the Appellant’s eligibility for Medicaid Services. This exhibit was entered into the record but issued no weight during the State Hearing Officer’s decision.

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 is a 23-year-old adult.
- 2) The Appellant applied for benefits and services through the Respondent’s Intellectual/Developmental Disabilities Waiver (I/DD) services program.
- 3) On November 15, 2023, 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 on the IPE with Generalized Anxiety Disorder with Panic Attacks, Obsessive Compulsive Disorder, and Borderline Intellectual Functioning.
- 5) On November 30, 2023, the Respondent issued a Notice of Decision (Exhibit D-2) to the Appellant advising her that her application had been denied because “documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver Program of Intellectual disability or a related condition which is severe.” Additionally, the notice stated “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 in the following major life areas-receptive or expressive language, learning, mobility, self-direction, 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 that 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 services must 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. Based on the information and evaluations submitted for review, the Appellant failed to meet the diagnostic and functionality eligibility criteria. Eligibility is established in the diagnostic area when an individual presents a diagnosis of an Intellectual Disability, or a related condition which constitutes a severe, and chronic disability with concurrent substantial deficits which manifested prior to age 22. Eligibility is established in the functionality area when an individual presents three substantial deficits in the six outlined life areas. The Appellant requested this fair hearing as an appeal to the Respondent's determination. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic eligibility standards.

As part of the application process, an IPE was administered with the Appellant and her mother by evaluating psychologist, [REDACTED] M.A., of Eastern Psychological Services, Inc. The evaluating psychologist concluded and diagnosed the Appellant with Generalized Anxiety Disorder, Obsessive Compulsive Disorder, and Borderline Intellectual Functioning. [REDACTED]

administered a Wechsler Adult Intelligence Scale, as a measure of the Appellant's intellectual functioning, in which the Appellant presented a full-scale Intelligence Quotient (IQ) of 69 which was considered Borderline to the Extremely Low range of intellectual functioning. The Appellant's adaptive behavior was measured in the IPE through an Adaptive Behavior Assessment System (ABAS)-3 which yielded a substantial adaptive deficit in the life area of self-care. The Appellant's academic functioning was measured in the IPE using the Wide Range Achievement Test (WRAT)-5, in which she demonstrated an average range of functioning. Charley Bowen, consulting psychologist for the Bureau of Medical Services, reviewed the IPE, additional evidence and corresponding test scores, and purported that the Appellant did not present a diagnosis of an Intellectual Disability on the IPE. Mr. Bowen expounded on the documentation indicating that two of diagnostic impressions presented a mental illness which was excluded by the policy. Additionally, the IPE failed to establish substantial limitations in three of or more of six major life areas.

██████████, the Appellant's mother, testified that the Appellant is a participant with Hampshire County Special Services, in which she has demonstrated some improvement with her diagnosis during her participation with the program. ██████████ purported that the Appellant continues to require assistance with multiple daily activities. The Appellant indicated that she continues to have issues with some learning aspects in her daily activities.

Based on a review of the evidence, the Appellant failed to meet the diagnostic and functionality criteria outlined by governing policy. During the IPE, the Appellant's diagnosis of Borderline Intellectual Functioning failed to demonstrate an Intellectual Disability. Additionally, the Appellant demonstrated one substantial deficit in the six major life areas defined by policy. Because the Appellant failed to meet the diagnostic and functionality criteria, the Respondent's decision to deny the Appellant's application for I/DD Waiver services is affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires that an individual must meet the medical eligibility criteria of a diagnosis of an Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) Policy requires that an individual must demonstrate substantial deficits in at least three of six identified major life areas including self-care, communication, functional academics, mobility, self-direction, and capacity for independent living.
- 3) The Appellant was diagnosed with Borderline Intellectual Functioning, which does not meet the severity criteria defined by policy.
- 4) During the IPE, the Appellant presented a substantial adaptive deficit in the area of self-care but did not demonstrate additional deficits to meet the functionality criteria.
- 5) The Appellant failed to meet the diagnostic criteria threshold for services under the I/DD Waiver program.

- 6) The Appellant failed to meet the functionality criteria threshold for services under the I/DD Waiver program.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's denial of the Appellant's application for services under the I/DD Waiver program.

ENTERED this _____ day of March 2024.

Eric L. Phillips
State Hearing Officer