



**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 15, 2024

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WV<sub>o</sub>HS/BMS  
ACTION NO.: 24-BOR-1293

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 Health and 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,

**Tara B. Thompson, MLS**  
State Hearing Officer  
Member, State Board of Review

Encl: Decision Recourse  
Form IG-BR-29

CC: Stacy Broce, Bureau for Medical Services (BMS)  
Kerri Linton, Psychological Consultation and Assessment  
Janice Brown, Acentra

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 24-BOR-1293**

**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 ■ a protected individual. This hearing was held in accordance with the provisions found in Chapter 700 of the Board of Review's Common Chapters Manual. This fair hearing was convened on March 6, 2024.

The matter before the Hearing Officer arises from the Respondent's November 21, 2023 decision to deny the Appellant's medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver program.

At the hearing, the Respondent was represented by Kerri Linton, Psychological Consultation and Assessment. Observing on behalf of the Respondent and not providing testimony was Jamie Dill, PC&A. The Appellant's guardian, ■, represented the Appellant. Appearing as a witness on behalf of the Appellant was ■. All witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Chapter 513 excerpts
- D-2 BMS Notice, dated November 21, 2023
- D-3 Independent Psychological Evaluation (IPE), dated November 13, 2023
- D-4 IPE, dated August 15, 2023
- D-5 BMS Notice, dated September 20, 2023
- D-6 IPE, dated January 2, 2023
- D-7 BMS Notice, dated January 12, 2023
- D-8 E/IEP Result Form, dated December 5, 2022
- D-9 ■ Department of Behavioral Health Letter, undated

D-10 [REDACTED] Letter, undated

**Appellant's Exhibits:**

A-1 Independent Evaluation for West Virginia Children with Serious Emotional Disorders Waiver

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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) The Appellant applied for the Medicaid I/DD Waiver program and was denied medical eligibility on January 12 and September 20, 2023, because the submitted documentation failed to indicate the presence of an eligible diagnosis or related substantial adaptive deficits (Exhibits D-5 and D-7).
- 2) After the Respondent's September 20, 2023 denial of medical eligibility for the Medicaid I/DD Waiver program, the Appellant sought a second medical opinion (Exhibit D-3).
- 3) On November 21, 2023, the Respondent issued a notice advising the Appellant her Medicaid I/DD Waiver application had been denied because the submitted documentation failed to support the presence of an eligible diagnosis or substantial adaptive deficits in three or more major life areas (Exhibit D-2).
- 4) The Respondent's November 21, 2023 decision was based on a review of the November 13, 2023, Second Medical IPE; the August 15, 2023 IPR; the September 20, 2023 Notice of Denial; the January 2, 2023 IPE; the January 12, 2023 Notice of Denial; the December 5, 2022 IEP; Letter from [REDACTED]; and the Letter from [REDACTED] (Exhibit D-2).
- 5) On November 13, 2023, [REDACTED] completed an Independent Psychological Evaluation (IPE) with the Appellant (Exhibit D-3).
- 6) At the time of the November 13, 2023 IPE, the Appellant was 18 years old (Exhibit D-3).
- 7) Information for the November 13, 2023 IPE was supplied by the Appellant's legal guardian (Exhibit D-3).
- 8) The November 13, 2023 IPE reflected diagnoses including Borderline Intellectual Functioning; Disruptive Mood Dysregulation Disorder; Major Depressive Disorder, Recurrent, Moderate; Generalized Anxiety Disorder; Attention Deficit/Hyperactivity Disorder; and Child Physical Abuse (Exhibit D-3).
- 9) The Appellant has received mental health treatment since age six (Exhibit D-3).

- 10) At the time of the November 13, 2023 IPE, the Appellant was found eligible for Children with Serious Emotional Disorders (CSED) Waiver program services.
- 11) The Appellant is prescribed psychotropic medication for her mental health diagnoses (Exhibit D-3).
- 12) The Appellant engaged in conversational speech, has fair comprehension and understanding of receptive language, and can follow two-step directives with familiar tasks.
- 13) The Appellant's November 13, 2023 Adaptive Behavior Assessment System 3 (ABAS-3) results reflected scaled scores of 2 in *community use* and *leisure*. The results indicated scaled scores of 3 or 4 in all other skill areas (Exhibit D-3).
- 14) The Appellant's testing results were consistent with her diagnosis of Borderline Intellectual Functioning (Exhibits D-3, D-4, and D-6).
- 15) The Appellant received 35% special education services for *Other Health Impaired* and graduated with a regular high school diploma (Exhibit D-3 and D-8).
- 16) The Appellant has poor decision-making skills and requires prompting to conduct self-care, clean, do laundry, prepare food, and take her medication (Exhibits D-3 and D-4).
- 17) The Appellant can walk around the neighborhood, take the bus to meet friends at the mall, and babysit her younger cousin (Exhibit D-3).
- 18) The Appellant can choose to watch TV, use social media, go on walks, and hang out at the mall (Exhibit D-3).
- 19) On August 15, 2023, [REDACTED], completed an IPE with the Appellant (Exhibit D-4).
- 20) The August 15, 2023 ABAS-3 results reflected scaled scores of 1 in *social*. The results indicated scaled scores of 3 through 7 in all other areas (Exhibit D-4).
- 21) The August 15, 2023 IPE reflected diagnoses of Borderline Intellectual Functioning; Attention-Deficit Hyperactivity Disorder; Oppositional Defiant Disorder; Intermittent Explosive Disorder; Post-Traumatic Stress Disorder; Major Depressive Disorder; Generalized Anxiety Disorder; and Victim of Neglect (Exhibit D-4).
- 22) On January 2, 2023, [REDACTED], a licensed psychologist, completed an IPE with the Appellant (Exhibit D-6).
- 23) The January 2, 2023 IPE reflected diagnoses of Borderline Intellectual Functioning; Child Physical Abuse; Attention Deficit Hyperactivity Disorder; and Disruptive Mood Dysregulation Disorder (Exhibit D-6).

24) On April 25, 2022, [REDACTED] completed an Independent Evaluation for WV CSED Waiver eligibility (Exhibit A-1).

25) The April 25, 2022 CSED evaluation reflected diagnoses of Post Traumatic Stress Disorder; Major Depressive Disorder; and Attention-Deficit Hyperactivity Disorder (Exhibit A-1).

### **APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual § 513.6 *Applicant Eligibility and Enrollment Process*** provides in relevant sections: To be eligible for the Medicaid I/DD Waiver Program, the applicant must meet medical eligibility requirements ...

The applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN); which may include: background information, mental status examination, a measure of intelligence, adaptive behavior, achievement and any other documentation deemed appropriate ....

The Independent Psychologist (IP) is responsible for completing an IPE .... The evaluation includes assessments which support the diagnostic considerations offered and relevant measures of adaptive behavior.

The IPE is utilized by the MECA to make a final medical eligibility determination.

#### **BMS Manual § 513.6.2 *Initial Medical Eligibility* provides in relevant sections:**

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 in relevant sections:**

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*.

**DISCUSSION**

As of January 1, 2024, the former Department of Health and Human Resources (DHHR) Bureau for Medical Services (BMS) began operating as the Department of Human Services (DoHS) Bureau for Medical Services (BMS). The existing policies under DHHR BMS at the time of the Appellant’s medical eligibility denial were consulted in arriving at this decision.

The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicants’ eligibility for the Medicaid I/DD Waiver Program. PC&A is required to determine the Appellant’s eligibility through a review of an Independent Psychological Evaluation (IPE) report. The MECA does not have the authority to change the information submitted for review and can only determine if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility.

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 or related substantial functioning deficits. During the hearing, the Appellant's representative argued that the Appellant should be found medically eligible for the Medicaid I/DD Waiver Program because she requires assistance to remain safe and meet her daily living needs.

The Board of Review cannot judge the policy and can only determine if the MECA followed the policy when deciding the Appellant's Medicaid I/DD Waiver eligibility. Further, the Board of Review cannot make clinical conclusions regarding the Appellant's diagnosis and severity beyond what is stipulated in the IPE and submitted documentation. The Hearing Officer can only conclude whether the Respondent correctly denied the Appellant's eligibility based on the diagnosis and severity verified in the submitted documentation.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that the Appellant was correctly denied eligibility because the submitted documentation failed to meet the medical eligibility criteria for the Medicaid I/DD Waiver Program. 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 an ICF/IID level of care.*

### **The Independent Psychological Evaluation Record**

The Respondent is required to rely on the IPE when determining the Appellant's medical eligibility.

#### **Diagnosis**

To be eligible for the Medicaid I/DD Waiver, the preponderance of the evidence had to demonstrate the presence of an intellectual disability or a related severe and chronic disability attributable to a condition, other than mental illness, that resulted in an impairment of the Appellant's general intellectual functioning or adaptive behavior. The related condition had to be likely to continue indefinitely, manifest before age 22, and result in substantial functional limitations in three or more areas of major life activity.

To prove that the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver Program, the preponderance of evidence had to demonstrate that the Appellant did not have a diagnosis of a related condition which constituted a severe and chronic disability with concurrent substantial deficits manifested before age 22. While a mental illness may establish a basis for the Appellant's physician to determine she requires a legal guardian to handle her affairs, the policy specifically precludes mental illness diagnoses from establishing eligibility for the Medicaid I/DD Waiver.

The policy requires the MECA to consider the current diagnostic criteria when reviewing submitted documentation for eligibility. The Respondent's representative affirmed that the Appellant's testing scores were consistent with borderline intellectual functioning across the

assessments. During the hearing, the Respondent's representative testified that borderline intellectual functioning does not qualify as an intellectual disability. The evidence revealed that the special education services provided to the Appellant were for Other Health Impaired, not intellectual disability or a related condition.

The Appellant's mental health diagnoses were precluded from establishing diagnostic eligibility. The preponderance of the evidence failed to establish the presence of a diagnosis that constituted a severe and chronic disability with concurrent substantial deficits.

### **Functionality**

Eligibility for Medicaid I/DD Waiver must be established in each of the categories supplied by the policy. 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. Because the preponderance of the evidence failed to establish the presence of an eligible Intellectual/Developmental Disability or related severe diagnosis, severe functioning deficits related to an eligible diagnosis could not be established.

The narrative of the November 13, 2023 IPE indicated that due to a history of social services placements, the Appellant's developmental services history is unclear. The IPE narrative reveals that the Appellant engages in conversational speech, has fair comprehension and understanding of receptive language, and can follow two-step directives with familiar tasks.

During the hearing, the Appellant's representative and witness provided testimony regarding the Appellant's daily functioning limitations. While the evidence revealed the Appellant requires prompting and supervision to remain safe and accomplish daily tasks, the Respondent's representative testified that ICF/IID level of care recipients require hand-over-hand assistance to complete tasks and that prompting would not qualify as functioning severity necessitating an ICF/IID level of care.

The Respondent's representative testified that ABAS-3 scaled scores of 1 or 2 were required in at least three functioning areas to establish the presence of severe functioning deficits. Even if an eligible diagnosis had been established, additional functioning deficits were not revealed by the submitted reliable testing scores and narrative.

### **CONCLUSIONS OF LAW**

- 1) 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 an ICF/IID level of care.*
- 2) The preponderance of evidence revealed that the submitted documentation did not establish the presence of an intellectual disability diagnosis or a related condition that constituted a severe and



chronic disability with concurrent substantial deficits manifested before the Appellant was age 22.

- 3) Because the policy requires medical eligibility to be established in each category and the submitted evidence failed to establish the presence of a qualifying diagnosis, the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver.

### **DECISION**

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

Entered this 15<sup>th</sup> day of March 2024.

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**Tara B. Thompson, MLS**  
State Hearing Officer