



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

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

**Ann Vincent-Urling
Interim Inspector General**

March 20, 2024

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL, v. WVDohS
ACTION NO.: 24-BOR-1370

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Stacy Broce, WVDohS
Kerri Linton, PC&A
Janice Brown, Acentra

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

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 24-BOR-1370

**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 West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 13, 2024.

The matter before the Hearing Officer arises from the November 13, 2023, decision by the Respondent to deny I/DD Waiver Medicaid benefits.

At the hearing, the Respondent appeared by Charley Bowen, Long-Term Care Clinical Consultant, Psychological Consultation & Assessment (PC&A). The Appellant was represented by his mother, ■, and his father, ■. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Policy Chapter 513.6
- D-2 Notice of Decision dated November 13, 2023
- D-3 Independent Psychological Evaluation dated October 5, 2023
- D-4 Teacher/Daycare Providers Adaptive Behavior Assessment System, Third Edition (ABAS-3)
- D-5 Gilliam Autism Rating Scale (GARS 3) Summary Response Form
- D-6 Individualized Education Program, ■ Schools, dated May 25, 2023
- D-7 Documentation from ■ Schools, and information from ■
■ dated May 23, 2023
- D-8 Information from ■ Schools Department of Special Services (report date - May 24, 2023)

- D-9 WV Birth to Three Evaluation/Assessment Summary Reports
- D-10 Documentation from **REMOVED** Pediatric Center dated April 18, 2023
- D-11 Documentation from **REMOVED** Pediatric Center dated March 7, 2023

Appellant's Exhibits:

- A-1 Individualized Education Program, [REDACTED] Schools, dated May 25, 2023

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, who is currently three years old, applied for the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program.
- 2) The Respondent sent the Appellant a Notice of Decision on November 13, 2023, indicating that his I/DD Waiver application was denied (Exhibit D-2).
- 3) The November 13, 2023, notice states that the Appellant's I/DD Waiver application was denied because "documentation submitted for review is inconsistent with levels of functioning and associated diagnoses. While Unspecified Intellectual Disability and Autism Spectrum Disorder, Level 3 are diagnosed in the IPE, these diagnoses and levels of functioning are not reflected in the accompanying documentation. Potential eligible diagnoses must be considered chronic and lifelong and that is not reflected in the documentation submitted for review" (Exhibit D-2).
- 4) The Respondent identified two substantial adaptive deficits for the Appellant in the functional areas of *self-care* and *receptive or expressive language*. However, three deficits are required to meet I/DD Waiver eligibility functionality requirements (Exhibit D-2).
- 5) An Independent Psychological Evaluation (IPE) was completed for the Appellant on October 5, 2023 (Exhibit D-3).
- 6) The IPE lists diagnoses of Autism Spectrum Disorder, Level 3, with language impairment and intellectual impairment, and Unspecified Intellectual Disability (Exhibit D-3).
- 7) No standardized intelligence test was administered to the Appellant during the October 5, 2023, IPE.
- 8) The IPE evaluator used the Battelle Developmental Inventory-2 screening tool to assess the Appellant's intellectual and cognitive abilities. The Appellant's scores ranged from one and two standard deviations below the mean. Scores must be three standard deviations below the mean (69 and below) to meet I/DD Waiver intellectual disability severity standards (Exhibit D-3).

- 9) The Appellant received a severity rating of Level 2 on a Gilliam Autism Rating Scale-3 (GARS-3) completed by his occupational therapist (Exhibit D-5).
- 10) The Appellant has an Individualized Education Program (IEP) and receives services through ██████████ Schools (Exhibit D-6).
- 11) The Appellant struggles with sensory processing and becomes easily overstimulated and distracted. He is highly sensory driven and requires constant cues and supervision (Exhibit D-7).
- 12) A psychological evaluation completed by the West Virginia Birth to Three Program on April 25, 2023, indicates that the Appellant had a raw score of 13 and a standard score of 90 on the Developmental Profile-4th Edition assessment of his cognitive abilities. The I/DD Waiver Program requires scores of 69 and below to establish a severe intellectual disability (Exhibit D-9).
- 13) The April 2023 evaluation lists a primary diagnosis of Global Developmental Delay, and the evaluator specified that the Appellant does not meet full criteria for Autism Spectrum Disorder. The Appellant did not present with deficits in social emotional reciprocity, as he engaged with the therapist, readily responded to his name, engaged in back-and-forth play, and mimicked the therapist's behaviors (Exhibit D-9).

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513.6 (Exhibit D-1) state:

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 may, if severe and chronic in nature, 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 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 the 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*.

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 intellectual disability 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 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

To qualify for the I/DD Waiver Medicaid Program, policy dictates that an 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.

The Respondent's representative, Charley Bowen, Long-Term Care Clinical Consultant for PC&A, testified that evidence provided for review does not support a diagnosis of Level 3 Autism. He stated that the evaluator who completed the October 2023 IPE made the Level 3 diagnosis without completing an intelligence test, which is not a normal procedure. Mr. Bowen pointed out that the Appellant had not met criteria for a Level 1 Autism diagnosis on the Birth to Three Psychological Evaluation completed in April 2023, and the documentation submitted for review was inconsistent. Mr. Bowen testified that the I/DD Waiver Program is a lifelong program, and that intellectual ability does not crystallize until age seven or eight.

The Appellant's mother, [REDACTED], testified that the Appellant's information has been updated by his therapy providers to include the Autism diagnosis from the October 2023 evaluation. She stated that the structure of the Appellant's therapy has changed to a special education pre-school classroom, with a teacher providing one-on-one support for the hour the Appellant is in attendance. [REDACTED] stated that the Appellant is currently awaiting evaluation by a neurodevelopmental specialist.

While the Appellant clearly faces many challenges, documentation submitted for review does not confirm the presence of an eligible diagnosis. Therefore, the Respondent's decision to deny I/DD Waiver Medicaid benefits is affirmed.

CONCLUSIONS OF LAW

- 1) To qualify for I/DD Waiver Medicaid benefits, an individual must meet the diagnostic, functionality and severity criteria identified in policy.
- 2) Diagnostic criteria dictates that an individual must have a severe and chronic intellectual disability with concurrent substantial deficits manifested prior to age 22.

- 3) Information provided for review was inconsistent and does not support the presence of an eligible diagnosis.
- 4) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet diagnostic criteria is affirmed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny I/DD Waiver Medicaid benefits.

ENTERED this 20th Day of March 2024.

**Pamela L. Hinzman
State Hearing Officer**