



April 16, 2024



RE: [REDACTED], A JUVENILE v. DoHS/BMS
ACTION NO.: 24-BOR-1488

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 (DoHS). 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

Enclosures: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Janice Brown, Acentra
Kerri Linton, Psychological Consultation and Assessment

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

█, A JUVENILE,

Appellant,

v.

Action Number: 24-BOR-1488

**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 juvenile. 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 March 27, 2024.

The matter before the Hearing Officer arises from the Respondent's February 6, 2024 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, psychologist, Psychological Consultation and Assessment (PC&A). Observing on behalf of the Respondent was Jaime Dill, PC&A. The Appellant was represented by her advocate, █ a psychologist. Appearing as a witness for the Appellant was her mother, █. All witnesses were placed under oath and the following exhibits were submitted as evidence:

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual Chapter 513 excerpts
- D-2 DoHS Notice, dated February 6, 2024
- D-3 Independent Psychological Evaluation (IPE) dated, February 1, 2024
- D-4 Notice of Individual Evaluation/Reevaluation Request, dated January 29, 2024
Pre-K Student Assistance Team Report, dated January 29, 2024
- D-5 █ Medicine Records:
 - Clinical Note, by █, dated July 13, 2022
 - Developmental Assessment, dated July 13, 2022

D-6 [REDACTED] Re-Authorization Treatment Plan for Applied Behavioral Analysis, July 2023 through January 2024

D-7 [REDACTED] letter, by [REDACTED], Special Education Board Certified Behavior Analyst (BCBA)

Exhibits:

A-1 Completed [REDACTED] Forms

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) An application was submitted on behalf of the then-four-year-old Appellant to determine her Medicaid I/DD Waiver Program eligibility.
- 2) On February 6, 2024, the Respondent issued a notice denying the Appellant’s medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation failed to establish the presence of an eligible severe diagnosis and inconsistently reflected the Appellant’s need for an Intermediate Care Facility (ICF) level of care (Exhibit D-1).

Independent Psychological Evaluation (IPE) — February 1, 2024

- 3) On February 1, 2024, [REDACTED] a licensed psychologist conducted an IPE for the Appellant (Exhibit D-3).
- 4) The Appellant’s mother, [REDACTED], participated in the IPE and provided “background information, presenting symptoms, and completed the ABAS-3 and the GARS-3” (Exhibit D-3).
- 5) [REDACTED] considered the results of previous a psychological evaluation and diagnoses including [REDACTED] – Autism Spectrum Disorder, level 2 social communication, level 2 restricted, repetitive behaviors, with accompanying language disorder” (Exhibit D-3).

Narrative

- 6) Under *self-care*, [REDACTED] indicated the Appellant can independently physically put on all items of clothing but requires assistance with buttons, zippers, and tying shoes (Exhibit D-3).
- 7) Under, *self-care*, [REDACTED] indicated the Appellant requires physical assistance in bathing, washing hair, brushing teeth, brushing hair, toileting, and meal preparation (Exhibit D-3).

- 8) [REDACTED] *receptive or expressive language* narrative indicated the Appellant can communicate her wants and needs verbally without the use of any communication devices (Exhibit D-3).
- 9) [REDACTED] *functional learning* narrative indicated that testing results were within an average range and the Appellant does not have significant functional learning deficits.
- 10) [REDACTED] *mobility* narrative indicated the Appellant can ambulate independently without mechanical aids (Exhibit D-3).
- 11) [REDACTED] *self-direction* narrative indicated the Appellant can make self-directed choices if given two options verbally and has preferred leisure activities (Exhibit D-3).
- 12) [REDACTED] *capacity for independent living* narrative indicated that the Appellant can pick up toys with prompting and imaginatively play with other children (Exhibit D-3).
- 13) [REDACTED] *capacity for independent living* narrative indicated the Appellant is unaware of safety issues in her environment and cannot independently utilize community resources (Exhibit D-3).

Test Scores

- 14) [REDACTED] administered intellectual/cognitive tests including the Wechsler Preschool and Primary Scale of Intelligence (WPPSI)-4 and Adaptive Behavior Assessment System 3rd Edition (ABAS-3) (Exhibit D-3).
- 15) The Appellant's WPPSI-4 results revealed the Appellant "is functioning in an average intellectual functioning range" (Exhibit D-3).
- 16) [REDACTED] found that the Appellant "put forth good effort" on the WPPSI-4 and determined the scores were valid.
- 17) The ABAS-3 results reflected scaled scores of 1 in *community use, home living, health and safety, self-care, and self-direction* (Exhibit D-3).
- 18) The ABAS-3 results reflected scaled scores of 3 and above in the areas of *communication, functional pre-academics, leisure, social, and motor* (Exhibit D-3).
- 19) [REDACTED] found that the Appellant's ABAS-3 scores were consistent with the information gathered during the interview and were valid (Exhibit D-3).
- 20) The IPE indicated [REDACTED] administered the "Gilliam Autism Reeking Scale 3" but included a Gilliam Autism Rating Scale-Third Edition (GARS-3) Summary/Response Form (Exhibit D-3).
- 21) [REDACTED] *Autism Screening* results revealed an Autism Index Score of 103 and a Severity Level of 3 (Exhibit D-3).

- 22) [REDACTED] *Autism Screening* narrative reflected “Overall, results of this assessment are considered valid. Her answers are consistent with information gathered during the interview” (Exhibit D-3).
- 23) [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, level 2 without intellectual impairment (Exhibit D-3).

Schools Individual Evaluation — January 29, 2024

- 24) On January 29, 2024, [REDACTED] [REDACTED] Schools completed an initial individual evaluation to determine the Appellant’s educational needs (Exhibit D-4).
- 25) The January 29, 2024 individual evaluation was based on the Appellant’s developmental skills and information provided by the Appellant’s parents (Exhibit D-4).
- 26) The narrative indicates the Appellant uses words to communicate her wants and needs (Exhibit D-4)
- 27) The narrative indicates the Appellant has no concerns with gross motor skills or fine motor skills (Exhibit D-4).
- 28) The narrative indicates the Appellant is socially shy with adults and peers (Exhibit D-4).
- 29) The narrative indicates the Appellant can complete 3-4 piece puzzles, enjoys music and dancing, knows most of her colors, can identify animals and their sounds, knows numbers 1-10, and can spell her name (Exhibit D-4).
- 30) The narrative indicates that the Appellant requires assistance toileting (Exhibit D-4).
- 31) The narrative indicates that the Appellant can use utensils and brush her teeth and hair (Exhibit D-4).
- 32) *Additional Information/Concerns* lists “Diagnosis of autism level 3-global communication, level 2 in other areas from the NDC. Previously received OT and BTT” (Exhibit D-4).

Applied Behavior Analysis Treatment Plan July 2023- January 2024

- 33) On July 27, 2022, [REDACTED] PsyD, (hereafter, [REDACTED]) completed an Applied Behavior Analysis (ABA) treatment plan with the Appellant (Exhibit D-6).
- 34) On July 27, 2022, [REDACTED] observed the Appellant engaging in “several functional play activities including dress-up clothes, cooking in the play kitchen set (baking a cake), dolls, dollhouse, play cleaning supplies (broom, dustpan), pretend phone, sharing toys with the therapist (Exhibit D-6).
- 35) On July 27, 2022, [REDACTED] observed the Appellant answering questions with “yes/no” (Exhibit D-6).

- 36) On July 27, 2022, [REDACTED] observed the Appellant “using 1-2 words for preferred items or to gain access to specific activities” (Exhibit D-6).
- 37) On August 2, 2022, the narrative indicated that the Appellant’s “BCBA” conducted an in-home observation of the Appellant in her natural environment (Exhibit D-6).
- 38) The August 2, 2022, BCBA observation narrative revealed “that communication skills are present” but the Appellant’s requests were difficult to comprehend due to deficits in articulation and motor mouth movement (Exhibit D-6).
- 39) The August 2, 2022 BCBA observation narrative indicated the Appellant was “very interested in toys that she chose” but required redirection to complete an instruction that required prompting or physical guidance (Exhibit D-6).
- 40) On January 9, 2023, BCBA staff provided interventions related to speech development (Exhibit D-6).
- 41) In January 2023, the Appellant received interventions for developing “social skills, manding, tacting, functional play, following simple instructions and generalizing mastered programs” (Exhibit D-6).
- 42) In January 2023, the Appellant was “communicating her wants and needs more frequently. In addition to her communication skills, she has gained skills in all required domains and goals set in place” (Exhibit D-6).
- 43) On July 10, 2023, the Appellant was making “improvements with communication, by using multiple words phrases consistently to express her wants and needs” (Exhibit D-6).
- 44) On January 2, 2024, the Appellant was observed to “make improvements with communication by using a wide variety in her requests/phrases, as well as clarity and speed of her words” (Exhibit D-6).
- 45) In January and July 2023 and January 2024, the Appellant exhibited challenging behaviors including negative vocalizations, throwing toys, and non-compliance (Exhibit D-6).

Test Scores

- 46) On the August 2022 ABAS-3, [REDACTED] scored the Appellant as “low” in *communication* and *self-direction*; “below average” in *functional pre-academics*, *leisure*, *community use*, *health and safety*; and “average” in *social* and *home living* (Exhibit D-6).
- 47) The August 2022 ABAS-3 scores reflected in the narrative were: an overall conceptual score of 73 (low), a social score of 84 (below average), and a practical score of 84 (below average) (Exhibit D-6).

- 48) On the January 2023 ABAS-3, [REDACTED] scored the Appellant as “extremely low” in *communication*; “below average” in *functional pre-academics, self-direction, community use, home living, and health and safety*; “average” in *leisure, social, and motor* (Exhibit D-6).
- 49) The January 2023 ABAS-3 scores reflected in the narrative were: an overall conceptual score of 72 (low), a social score of 94 (average), and a practical score of 81 (below average) (Exhibit D-6).
- 50) On the July 2023 ABAS-3, [REDACTED] scored the Appellant as “below average” in *community use, functional pre-academics, health and safety, and self-care*; “average” in *communications, self-direction, social, home living, and motor skills*; and above average” in *leisure* (Exhibit D-6).
- 51) The July 2023 ABAS-3 scores reflected in the narrative were: an overall conceptual score of 84 (below average), a social score of 106 (average), and a practice score of 85 (below average) (Exhibit D-6).
- 52) The January 2024 narrative indicated that [REDACTED] the Appellant’s caregiver, completed the ABAS-3 rating form (Exhibit D-6).
- 53) The January 2024 record contained a typographical error and should have indicated that [REDACTED] (hereafter, [REDACTED]) completed the ABAS-3 rating form (Exhibit D-6).
- 54) In January 2024, [REDACTED] scored the Appellant as “low” in *home living and health and safety*; “below average” in *communication, self-direction, leisure, social, and community use*; and “average” in *motor* (Exhibit D-6).
- 55) The January 2024 ABAS 3 scores reflected in the narrative were: an overall conceptual score of 80 (below average), a social score of 80 (below average), and a practical score of 69 (low).
- 56) ABAS-3 scaled scores of 1-3 constitute the “extremely low” category.

Child Development/ Neurodevelopmental Center Assessment — July 13, 2022

- 57) On July 13, 2022, [REDACTED] completed a clinical note for a neurodevelopmental evaluation with the then-two-year-old Appellant (Exhibit D-5).
- 58) [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, level 2 social communication, level 1 restricted, repetitive behaviors, with accompanying language disorder (Exhibit D-5).
- 59) During the evaluation, [REDACTED] relied on information provided by the Appellant’s mother, who was in attendance, and forms completed by the Appellant’s parent/caretakers (Exhibit D-5).

- 60) [REDACTED] narrative indicated the Appellant communicated her wants and needs by pointing, taking her parents by the hand, and attempting to make verbal requests. The narrative indicates that verbal requests are difficult to understand (Exhibit D-5).
- 61) [REDACTED] narrative indicated the Appellant could put on her clothes and shoes (Exhibit D-5).
- 62) [REDACTED] narrative stated the Appellant “does not want help with a lot of things and does not allow hand over hand assistance” (Exhibit D-5).
- 63) [REDACTED] narrative indicated the Appellant can engage in play with preferred toys and activities (Exhibit D-5).
- 64) [REDACTED] narrative indicated, “[REDACTED] and myself had an extended discussion with both [REDACTED] mother in person and her father available over the phone regarding our assessment and diagnosis of [REDACTED] today” (Exhibit D-5).
- 65) [REDACTED] completed a Developmental Assessment with the Appellant and [REDACTED] (Exhibit D-5).
- 66) [REDACTED] narrative indicated the Appellant has good imaginative back-and-forth play and engages “if things are on her terms” (Exhibit D-5).
- 67) [REDACTED] administered the Developmental Profile 4th Edition (DP-4), a structured parent/caregiver interview to identify developmental strengths and weaknesses early in a child’s life (Exhibit D-5).
- 68) The results of the DP-4 were Average in *physical, adaptive behavior, social-emotional, cognitive, and general development*. The results of the DP-4 were below average in *communication* (Exhibit D-5).
- 69) [REDACTED] administered the Childhood Autism Rating Scale, Second Edition, Standard Version (CARS 2-ST), a tool for assessing autism spectrum disorder (Exhibit D-5).
- 70) The results of the CARS 2-ST revealed the Appellant had mild to moderate symptoms of autism spectrum disorder (Exhibit D-5).
- 71) [REDACTED] administered a Child Behavior Checklist 1.5-5 (Parent Form) to [REDACTED] (Exhibit D-5). The results of the form revealed one borderline clinically significant scaled score to *Internalizing Problems* (Exhibit D-5).
- 72) [REDACTED] diagnosed the Appellant with autism spectrum disorder level 2 social communication, level 2 restricted, repetitive behaviors, with accompanying language disorder (Exhibit D-5).

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 an 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 an 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 by 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*.

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.

(d) It results in substantial functional limitations in three or more of the following areas of major life activity:

- (1) Self-care.
- (2) Understanding the use of language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.

DISCUSSION

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 and the need for an ICF/IID level of care. The Appellant's representative argued that the Appellant has severe functioning impairments related to her Autism diagnosis and should be found eligible.

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 decide 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 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 corroborated by the submitted documentation. The Hearing Officer can only decide whether the Respondent correctly denied the Appellant's eligibility based on the diagnosis and condition severity indicated on the IPE and corroborated by the submitted documentation.

During the hearing, the Respondent's representative testified that when determining eligibility, the MECA first decides whether the Appellant has an eligible diagnosis, then, whether substantial adaptive deficits related to an eligible diagnosis are present, and, finally, whether a need for active treatment and requirement for an ICF/IID level of care exist.

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.*

Diagnosis

The Appellant did not dispute that the documentation failed to support the presence of an intellectual developmental disability diagnosis. The Appellant argued that the submitted records revealed the presence of severe autism, which is an eligible related condition.

The policy provides that when severe and chronic, Autism may be an eligible related condition. Under federal regulations, persons with related conditions are applicants with a severe, chronic disability that is attributable to a condition other than mental illness, found to be closely related to intellectual disability because the condition results in an impairment of general functioning like that of intellectually disabled persons, and requires treatment or services like those required for these persons.

The policy stipulates that the MECA must determine eligibility through a review of an IPE completed by a member of the Independent Psychologist Network (IPN). The parties did not dispute that [REDACTED] was a member of the IPN. The IPE must verify the presence of an eligible severe and chronic related condition.

Severity

To be eligible for the Medicaid I/DD Waiver Program, the Appellant's related condition had to constitute a severe and chronic disability with concurrent substantial deficits manifested before age 22. 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 severe and chronic autism spectrum disorder with concurrent substantial deficits. The evidence revealed the Appellant is below age 22.

The Appellant argued that the policy does not specify that autism, level 3, is required to establish eligibility. While the policy does not specify that autism spectrum disorder must be diagnosed as level 3, the policy stipulates that the related diagnosis must be severe. During the hearing, the Respondent's representative testified that current diagnostic guidelines constitute severe autism as level 3.

[REDACTED] argued the Appellant should be diagnosed with autism, level 3, because her GARS-3 scores indicated the presence of autism spectrum disorder, level 3. [REDACTED] argued that [REDACTED] diagnosis doesn't match the level indicated on the GARS-3. The Appellant's representative did not contest the reliability of the February 2024 GARS-3 results. The Board of Review does not have the authority to change the condition severity level reflected on the IPE.

The evidence revealed that autism screening was conducted with [REDACTED] on February 1, 2024. The results of the February 1, 2024 GARS-3 indicated an autism severity level of 3. The evidence revealed that [REDACTED] considered the diagnosis made by [REDACTED] during the IPE assessment. [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, level 2. The evidence revealed that [REDACTED] administered autism screening that indicated mild to moderate symptoms of autism spectrum disorder and diagnosed the Appellant with Autism Spectrum Disorder, level 2. Subsequently, [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, level 2.

During the hearing, the Respondent's representative testified that consistency in test scores and narrative is required to establish eligibility. The Respondent's representative testified that the diagnosis of autism spectrum disorder, level 2, is consistent across the submitted records. Diagnosis severity levels assigned by [REDACTED] were consistent with the autism severity level provided by [REDACTED]

The school evaluation reflected an "autism level 3" diagnosis as an additional concern, however, corroborating records were not provided to verify that the diagnosis reflected by the school record was made by a qualified provider as required by the policy. Therefore, this diagnostic reference was given little weight in the decision of the Hearing Officer.

As severe and chronic autism is indicated by a diagnosis of autism spectrum disorder, level 3, and the preponderance of the evidence established that the Appellant had a diagnosis of autism spectrum disorder, level 2, the Appellant's diagnosis does not constitute an eligible related condition. Because the preponderance of evidence did not reveal the presence of a severe and chronic related condition, the Respondent correctly denied the Appellant's Medicaid I/DD Waiver eligibility.

Reliability of the Records

Consistency of Narrative

During the hearing, [REDACTED] contested the reliability of the assessment completed by the school (Exhibit D-4) and argued the assessment was completed quickly by telephone. Specifically, [REDACTED] contested the reliability of the narrative of the school's assessment (Exhibit D-4) and argued the Appellant cannot dress and groom herself.

The evidence revealed that [REDACTED] self-care narrative, in parts, conflicted with ABAS-3 scaled scores of 1 but is consistent with the earlier neurodevelopmental evaluation narrative regarding the Appellant's self-care abilities. Although the information was provided by the Appellant's parents in each circumstance, information reflected in the narrative and ABAS-3 results conflicted. During the hearing, the Appellant's representative argued that a variation in results could be related to an improvement or decline in the Appellant's functioning or improvement in the rater's understanding of how to complete the form.

The school's evaluation stipulated the Appellant did not require physical assistance for teeth and hair grooming. In July 2022, the neurodevelopmental evaluation narrative revealed that the Appellant refused hand-over-hand assistance and was able to put on her clothes and shoes. This earlier information is consistent with the school's January 2024 and [REDACTED] February 2024 narratives regarding the Appellant's self-care abilities.

The preponderance of the evidence revealed that the narrative contested by the Appellant was consistent with records completed by different evaluators. Therefore, the Appellant's argument that [REDACTED] IPE and the school evaluation narrative were unreliable cannot be affirmed.

Regarding ABAS-3 Instructions:

The Appellant contested the reliability of the February 2024 ABAS-3 scores and argued that [REDACTED] failed to provide the Appellant with the required ABAS-3 instructions. [REDACTED] testified that administrators of the ABAS-3 form are required to provide the rater with instructions regarding how to complete the form. The Respondent's representative agreed to this procedure. [REDACTED] testified that the [REDACTED] has received some instruction from [REDACTED] staff on how to complete the ABAS-3 form. [REDACTED] testified that a lack of understanding regarding form completion can bias the outcome of the assessment and requested that [REDACTED] ABAS-3 scores not be considered.

[REDACTED] ABAS-3 parent form was administered on February 1, 2024. The evidence revealed that before [REDACTED] February 2024 ABAS-3 form was administered, [REDACTED] had completed ABAS-3 forms administered by providers other than [REDACTED] in August 2022, January 2023, and July 2023. The preponderance of the evidence failed to establish that the ABAS-3 results were unreliable because [REDACTED] lacked sufficient understanding of how to complete the forms.

During the hearing, [REDACTED] testified that the January 2024 ABAS-3 narrative contained a typographical error and should have reflected that [REDACTED] completed the assessment. [REDACTED] argued that [REDACTED] had no previous experience completing the form, did not understand the directions, and completed the form on her phone while babysitting. Although the record contained a typographical error in [REDACTED] name, [REDACTED] was not present to corroborate what she knew and understood regarding the directions of the form, therefore, little weight was given to [REDACTED] testimony regarding [REDACTED] knowledge of the ABAS-3 instructions and the unreliability of the information could not be confirmed.

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 diagnosis, severe functioning deficits related to an eligible diagnosis could not be established.

Arguments were provided by the parties regarding the results of the ABAS-3 parent forms and the lack of agreement between the ABAS-3 results and the narrative. As the evidence failed to establish the presence of an eligible severe diagnosis, the issue of whether the submitted documentation supported the presence of related functional limitations in three major life areas is moot.

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) Autism Spectrum Disorder, level 3, is an eligible chronic and severe related condition.
- 3) 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.
- 4) 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 16th day of April 2024.

Tara B. Thompson, MLS
State Hearing Officer