



April 26, 2024

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DoHS/BMS
ACTION NO.: 24-BOR-1497

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,

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

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

cc: Stacy Broce, Bureau for Medical Services
Janice Brown, Acentra
Kerri Linton, Psychological Consultation and Assessment (PC&A)

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

█ A JUVENILE,

Appellant,

v.

Action Number: 24-BOR-1497

**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 8, 2024 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, a licensed 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 licensed psychologist. Appearing as a witness for the Appellant was her mother, █ (hereafter, █). 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 8, 2024
- D-3 Independent Psychological Evaluation (IPE), dated February 5, 2024
- D-4 IPE, dated May 26, 2021
- D-5 █ Goal Tracking, dated March 1 through March 31, 2021
- D-6 Comprehensive Psychological Evaluation, dated October 28, 2020

Exhibits:

A-1 GARS-3 February IPE and March [REDACTED] results graph

A-2 [REDACTED] Individualized Education Program (IEP) records

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 was approved for Medicaid I/DD Waiver services in 2021 and was placed on a waitlist until April 1, 2022, when a slot was released.
- 2) On April 13, 2022, the Appellant declined services.
- 3) An application was submitted on behalf of the then-five-year-old Appellant to determine his Medicaid I/DD Waiver program eligibility.
- 4) On February 8, 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 diagnosis or substantial adaptive deficits in three or more of the six major life areas identified for Medicaid I/DD Waiver eligibility.
- 5) At the time of the February 8, 2024 denial, the Appellant was not enrolled in the Medicaid I/DD Waiver Program.
- 6) On March 18, 2024, the Appellant began receiving special education services under the category of autism spectrum disorders (Exhibit A-1).

Independent Psychological Evaluation (IPE) — February 5, 2024

- 7) On February 5, 2024, [REDACTED] a licensed psychologist, conducted an IPE for the Appellant (Exhibit D-3).
- 8) [REDACTED] recorded that the Appellant “was accompanied to today’s evaluation by his father. He completed the ABAS-3 and the GARS-3, as well as background information and presenting symptoms” (Exhibit D-3).
- 9) [REDACTED] considered the results of previous evaluations and diagnoses including: “10/28/20 – [REDACTED] M.D., and [REDACTED] PsyD – Autism Spectrum Disorder, level 3 communication, level 2 restricted, repetitive behaviors, with accompanying language disorder, with accompanying Global Development of Delay. He was also diagnosed with Childhood Apraxia of Speech” and “5/26/2021 – [REDACTED] MA – Autistic Disorder, Global Developmental Delay” (Exhibit D-3).

10) The Appellant was receiving speech therapy, occupational therapy, and ABA therapy at the time of the IPE at [REDACTED] (Exhibit D-3).

Narrative

11) Under *self-care*, [REDACTED] indicated the Appellant can independently undress himself but refuses to dress himself and requires physical assistance with fasteners, ties, and buttons (Exhibit D-3).

12) Under *self-care*, [REDACTED] indicated the Appellant requires physical assistance with bathing, hair care, toileting, and brushing his teeth (Exhibit D-3).

13) Under *receptive or expressive language*, [REDACTED] indicated the Appellant can verbalize his wants and needs without the use of assistive devices (Exhibit D-3).

14) Under *functional learning*, [REDACTED] recorded that the DP-3 scores revealed social-emotional, cognitive, communication, and general development delays (Exhibit D-3).

15) Under *functional learning*, [REDACTED] recorded that the results of the Batelle Developmental inventory indicated significant cognitive delay (Exhibit D-3).

16) [REDACTED] *functional learning* narrative indicated that “No recent testing has been completed” (Exhibit D-3).

17) Under *mobility*, [REDACTED] indicated that the Appellant could ambulate independently, without mechanical aids, and no gross motor delays were noted (Exhibit D-3).

18) Under *self-direction*, [REDACTED] indicated the Appellant can make simple choices if given two options verbally and has preferred leisure activities (Exhibit D-3).

19) Under *capacity for independent living*, [REDACTED] indicated that the Appellant “needs a lot of physical assistance and verbal prompting to get him to pick up his toys” (Exhibit D-3).

20) Under *capacity for independent living*, [REDACTED] indicated the Appellant “is a flight risk at school, and needs to be watched closely” and “has to be watched closely in public because he may run off in a parking lot (Exhibit D-3).

21) Under *capacity for independent living*, [REDACTED] noted that the Appellant “doesn’t seem to understand safety issues at times” (Exhibit D-3).

Testing

22) [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).

- 23) [REDACTED] narrative for the Appellant's WPPSI-4 indicated the scores were considered valid (Exhibit D-3).
- 24) [REDACTED] narrative indicated the results revealed the Appellant "most likely does function in an average intellectual functioning range" (Exhibit D-3).
- 25) [REDACTED] administered an Adaptive Behavior Assessment System Third Edition (ABAS-3) (Exhibit D-3).
- 26) The ABAS-3 results indicated a scaled score of 5 for *self-care* and *community use* (Exhibit D-3).
- 27) The ABAS-3 results indicated a scaled score of 6 for *communication* (Exhibit D-3).
- 28) The ABAS-3 results indicated a scaled score of 7 for *functional pre-academics* and *leisure* (Exhibit D-3).
- 29) The ABAS-3 results indicated a scaled score of 8 for *motor* (Exhibit D-3).
- 30) The ABAS-3 results indicated a scaled score of 4 in *self-direction*, *social*, and *health and safety* (Exhibit D-3).
- 31) The ABAS-3 results indicated a scaled score of 3 for *home living* (Exhibit D-3).
- 32) The ABAS-3 narrative described a significant delay in *home living*; moderate delays in *community use*, *health and safety*, *self-care*, *self-direction*, and *social skills*; and mild delays in *communication*, *functional pre-academics*, and *leisure skills* (Exhibit D-3).
- 33) The ABAS-3 narrative indicated the Appellant's motor skill was within an average range (Exhibit D-3).
- 34) [REDACTED] ABAS-3 narrative indicates the "scores are consistent with information gathered during the interview and are considered valid" (Exhibit D-3).
- 35) [REDACTED] did not administer an achievement test "due to age" (Exhibit D-3).
- 36) The IPE indicated [REDACTED] administered the "Gilliam Autism Reeking Scale 3" and included a Gilliam Autism Rating Scale-Third Edition (GARS-3) Summary/Response Form (Exhibit D-3).
- 37) The *Autism Screening* results revealed an Autism Index Score of 94 and a Severity Level of 2 (Exhibit D-3).
- 38) [REDACTED] *Autism Screening* narrative reflected that the scores were consistent with information gathered through the interview and observation and were considered valid (Exhibit D-3).

- 39) [REDACTED] *Findings/Conclusions* provide that the Appellant “is a 5-year-old male who meets the criteria for Autism Spectrum Disorder,” and notes the Appellant “does have some behavioral meltdowns which may include aggressive behaviors, as well as some sensory issues. He is a flight risk at school” (Exhibit D-3).
- 40) [REDACTED] *Prognosis* reflected “fair,” and noted that the Appellant “will likely require ongoing training and supervision in order to maintain or improve his current level of functioning” (Exhibit D-3).

Diagnosis

- 41) [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, Level 2, sensory processing disorder (Exhibit D-3).

Goal Tracking — March 1 through March 31, 2021

- 42) The Appellant received Natural Environment Teaching Formant (NET) to prepare him to transition to Discrete Trial Teaching (DTT) (Exhibit D-5).
- 43) Treatment goals included imitating facial movements and sounds; imitating gross motor and fine motor actions; selecting objects from an array to complete the correct action; identifying the correct item when the therapist says an object name; picture matching; reducing elopement attempts; and tolerating toileting, transitions, and table sitting in absence of challenging behavior (Exhibit D-5).
- 44) The Appellant’s March 2021 goal tracking indicated the Appellant “is doing awesome, and we have already seen a lot of progress!” (Exhibit D-5).

IPE — May 26, 2021

- 45) On May 26, 2021, [REDACTED] conducted an IPE for the Appellant (Exhibit D-4).
- 46) [REDACTED] provided information during the IPE (Exhibit D-4).
- 47) At the time of the IPE, the Appellant was receiving services from the [REDACTED] [REDACTED] (Exhibit D-4).
- 48) [REDACTED] considered the results of previous evaluations and diagnoses including: “Psychological Evaluation: 10/28/2020 – [REDACTED] M.D. and [REDACTED] PsyD – Autism Spectrum Disorder, level 3 social communication, level 2 restricted, repetitive behaviors with accompanying language disorder, with accompanying Global Development of Delay. He was also diagnosed with Childhood Apraxia of Speech” (Exhibit D-4).

Testing

- 49) [REDACTED] administered a Battelle Developmental Inventory-2 (Exhibit D-4).
- 50) [REDACTED] narrative reflected the Appellant “has significant delays in all areas except for Motor. He has one standard deviation delay in his motor skill abilities, 1.5 standard

deviation deficits in his cognitive domain, and two standard deviation deficits in all other domains” (Exhibit D-4).

- 51) ██████████ administered an ABAS-3 (Exhibit D-4).
- 52) The ABAS-3 reflected a scaled score of 2 in *functional pre-academics*, a scaled score of 3 in *home living*, and a scaled score of 1 in *communication, community use, health and safety, leisure, self-care, self-direction, social, and motor* (Exhibit D-4).
- 53) The *Autism Screening* section reflects a “Gilliam Autism Reeking Scale 3” Autism Index score of 112 and severity level 3 (Exhibit D-4).
- 54) ██████████ *Developmental Summary* narrative provides that the Appellant “has significant delays in a number of life skill areas including self-care, receptive and expressive language, functional learning, self-direction, and capacity for independent living” (Exhibit D-4).
- 55) ██████████ *Findings/Conclusions* reflected the Appellant’s “language skills are emerging, but he is still essentially nonverbal. He does have some behavioral meltdowns, as well as some sensory issues” (Exhibit D-4).
- 56) ██████████ diagnosed the Appellant with “Autistic Disorder, Global Developmental Delay, sensory processing disorder” (Exhibit D-4).
- 57) ██████████ recorded the Appellant’s prognosis as “fair” and indicated the Appellant “will likely require ongoing intensive training and supervision in order to maintain or improve his current level of functioning” (Exhibit D-4).

Comprehensive Psychological Evaluations — October 28, 2020

- 58) On October 28, 2020, ██████████ PsyD (hereafter, ██████████) completed a comprehensive psychological evaluation with the Appellant (Exhibit D-6).
- 59) The Appellant was two years old at the time of the evaluation (Exhibit D-6).
- 60) The Appellant was non-verbal at the time of the evaluation (Exhibit D-6).
- 61) ██████████ administered the ABAS-3 parent form (Exhibit D-6).
- 62) The ABAS-3 results revealed a scaled score of 1 in *communication* and scaled scores of 3 through 9 in all other areas (Exhibit D-6).
- 63) ██████████ diagnosed the Appellant with Autism Spectrum Disorder, level 3 social communication, level 2 restricted, repetitive behaviors, with accompanying language disorder, with accompanying Global Developmental Delay, and Childhood Apraxia of Speech (Exhibit D-6).

- 64) [REDACTED] prognosis was “Good with consistent and aggressive training and support” (Exhibit D-6).
- 65) [REDACTED] placement recommendation was at home with the Appellant’s parents (Exhibit D-6).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 400.5.2 *Intellectual and Developmental Disabilities Waiver* provides in relevant sections: The I/DD Waiver program is West Virginia’s Home and Community Based Services program for individuals with intellectual and/or developmental disabilities that are at least three years of age. The I/DD Waiver program provides services based on a person’s annual functional assessment.

BMS Manual § 513.6.1.1 *Initial Eligibility Determination Process* provides in relevant sections: The applicant is provided with a list of Independent Psychologists (IP) in the Independent Psychologist Network (IPN) trained by the MECA who are available within the applicant’s geographical area. The applicant chooses a psychologist in the IPN and contacts the IP to schedule the appointment within 14 days.

The IP is responsible for completing an Independent Psychological Evaluation (IPE) that includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is utilized by the MECA to make a medical eligibility determination.

When the MECA denies eligibility, a notice is mailed advising the applicant of the right to a fair hearing or a second medical evaluation. If a second medical evaluation is requested, it must be completed within 60 days by a different member of the IPN at the expense of BMS.

Any applicant denied medical eligibility may re-apply to the Medicaid I/DD Waiver program at any time.

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*.

BMS Manual § 513.6.4 Slot Allocation Referral and Selection Process and §§ 513.7-513.7.1 Annual Re-Determination of Medical Eligibility provides in relevant sections: The enrollee must access I/DD Waiver direct care services within 180 days when the funded slot becomes available or the enrollee will be discharged from the program. In order for a member to be re-determined eligible, the member must continue to meet all eligibility criteria (both medical and financial) and continue to have deficits in at least three of the six identified major life areas. In accordance with federal law, re-determination of medical eligibility must be completed at least annually based on an assessment of functioning as defined in Section 513.6.2.2 *Functionality*.

Code of Federal Regulations 42 CFR § 440.150(a)(2) Intermediate Care Facility (ICF/IID) services provides in relevant sections: *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 provided in relevant sections:* 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 provides in relevant sections:* The Medicaid agency or its designee must evaluate each applicant's need for admission by reviewing and assessing the evaluations required by § 456.370.

DISCUSSION

During the hearing, the Appellant's representative provided testimony regarding the dates the Appellant was previously approved for and declined Medicaid I/DD Waiver program services. During the hearing, [REDACTED] testified that when the Appellant had a medical injury that was not reported to the Respondent's waiver agency, the waiver agency threatened to report the family to Child Protective Services. [REDACTED] testified she declined waiver services out of concern for her family.

Subsequently, the Appellant applied for and was denied Medicaid I/DD Waiver program eligibility in February 2024 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 contested the Respondent's February 2024 Medicaid I/DD Waiver program eligibility denial and argued that the diagnosis and functional improvement reflected in the February 2024 IPE was unreliable.

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 program eligibility. Further, the Board of Review cannot make clinical conclusions regarding the Appellant's diagnosis and severity beyond what is identified by the IPE and corroborated by the submitted information. 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 information.

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 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 policy requires for the eligible condition to be severe and chronic. The Appellant's February 2024 medical eligibility for the Medicaid I/DD waiver program cannot be based on the results of the May 2021 IPE or a previous Medicaid I/DD Waiver eligibility approval. The Respondent was

required to make the Appellant's February 2024 Medicaid I/DD waiver program eligibility decision based on an IPE that corroborates the current presence of a severe and chronic related condition and concurrent substantial adaptive deficits. 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 Appellant argued that [REDACTED] February 2024 assessment was brief and that [REDACTED] was distracted by the Appellant's behaviors during the assessment. The policy stipulates that when the Appellant's eligibility is denied, the Appellant may request a second medical evaluation at the expense of the Respondent. Instead of a second medical evaluation, the Appellant elected to request a fair hearing to determine whether the Respondent correctly denied the Appellant's eligibility based on the submitted information.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that the submitted documentation did not verify the presence of an eligible diagnosis with severe related functioning deficits.

Reliability of the Record

The Appellant's representative argued that the February 2024 IPE narrative, ABAS-3, GARS-3, and diagnoses were inconsistent with the Appellant's level of functioning at that time. The parties did not refute that [REDACTED] was a member of the IPN or that she was a qualified provider to administer the IPE. The Appellant's representative argued that the narrative does not reveal who completed the IPE with [REDACTED] or confirm that instructions for the ABAS-3 and GARS-3 were provided to [REDACTED]. The Appellant's representative argued the information in the narrative was not obtained during an interview with the Appellant's parents but reflected information gathered from assessments and other locations. The Appellant's representative contended that [REDACTED] did not receive proper ABAS-3 and GARS-3 instructions when completing the February 2024 assessment. [REDACTED] testified that [REDACTED] — who provided the information considered on the February 2024 IPE — was unable to attend the hearing due to being at the hospital with the Appellant. [REDACTED] testified that [REDACTED] received the ABAS-3 form by email with no instructions.

[REDACTED] testified that he believed the information provided in the IPE was inaccurate based on his interview with the Appellant, [REDACTED] which he conducted the evening before the hearing. [REDACTED] testified that the information he obtained during the interview would have been relevant at the time of the Respondent's eligibility denial.

A psychological evaluation, not older than three months, is required to establish eligibility for Medicaid ICF/IID admission or authorization of payment. To establish eligibility, the regulations provide that 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.

Narrative

The Appellant's representative argued that the IPE narrative was missing information. ██████ testified regarding his practices administering the IPE and argued that when he completes the narrative, he includes significantly more detail and "where, why, when, and how" he reviews each item. ██████ argued that ██████ narrative regarding the Appellant's self-care skills was inaccurate and that it was unclear where ██████ obtained the information reflected in the narrative. ██████ testified that when he completes an evaluation, he asks about and documents examples of the child being able to dress or not dress himself. ██████ argued that the IPE narrative is not the result of an interview and proffered that the narrative section was "probably" from the ABAS-3, not an interview with the parents. However, the evidence revealed ██████ recorded that the Appellant's father participated in the IPE by providing "background information and presenting symptoms," and completing the ABAS-3 and GARS-3. The *Mental Status Evaluation* narrative reflected that information was provided by the Appellant and ██████.

The preponderance of evidence revealed the February 2024 IPE included a diagnosis; summaries of each of the history categories; mental and physical functional capacity; prognosis; types of services needed; an assessment of the services being utilized by the Appellant; and a recommendation for ongoing training and supervision to maintain or improve current levels of functioning, not for ICF admission.

Test Scores

The Appellant's representative argued that the ABAS-3 and GARS-3 results were invalid because ██████ did not receive proper instruction and because ██████ failed to address the Appellant's significant improvement since the 2021 evaluation. ██████ was not present to corroborate what he knew and understood regarding the directions of the testing; therefore, little weight was given to hearsay testimony regarding ██████ understanding of the assessment.

The Appellant's representative argued that an ABAS-3 and developmental profile from 2021 reveal significant deficits that conflict with the level of improvement revealed in the February 2024 IPE. The Respondent's representative refuted ██████ testimony that functioning improvement at the Appellant's rate is not typical. The Respondent's representative testified that when children are provided with intensive services, as the Appellant has been, improvement is possible. The prognosis provided in the Appellant's earlier assessment indicated that the Appellant's prognosis was good with aggressive treatment. The submitted records indicate that the Appellant received intensive therapy services. The preponderance of submitted evidence does not rule out the reliability of the test scores.

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. 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's representative argued that the policy does not stipulate the diagnostic criteria must be autism spectrum disorder, level 3, or how severity must be measured. While the policy does not specify that autism spectrum disorder must be diagnosed as level 3, the policy requires 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] testified that the GARS-3 is the best measure of severity but that the submitted documentation doesn't provide narrative information to adequately address the severity level.

Under the policy, the IPE diagnosis had to be supported by assessments and relevant measures of adaptive behavior. The federal regulations task the agency with evaluating the applicant's need for admission by reviewing and assessing the required evaluations. [REDACTED] narrative indicated that she considered her previous diagnosis and the diagnosis of [REDACTED] and [REDACTED]. [REDACTED] found that the Appellant's *Autism Screening* results were consistent with information gathered through her interview and observation. [REDACTED] diagnosed the Appellant with Autism Spectrum Disorder, level 2, sensory processing disorder.

Reliability Conclusion

Although the Appellant's representative argued that the IPE was unreliable because [REDACTED] did not specifically address the changes in historical diagnosis and functioning, the regulatory requirements for the IPE do not stipulate this information must be included. The absence of information would only make the document unreliable if the missing information was required to be included by the controlling policies. The evidence revealed the February 2024 IPE contained a diagnosis; a 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 utilization of resources; and provided treatment recommendations. Neither the regulations nor the policy requires the IP to specifically address changes in the Appellant's diagnosis and functioning over time.

While the Appellant argued that the IPE was an unreliable measure of the Appellant's functioning and diagnosis, the only records submitted to represent the Appellant's functioning between 2021 and the 2024 Medicaid I/DD Waiver eligibility denial were the recent IEP evaluations. Sufficient information was not contained within the IEP records to establish that the Appellant had a diagnosis of autism spectrum disorder, level 3, at the time of the Respondent's denial. The IPE provided Autism Spectrum Rating Scales (ASRS) parent and teacher t-scores but did not offer a diagnostic impression of an eligible condition as required by the policy. [REDACTED] later assessment of the Appellant was not available for review at the time of the Respondent's Medicaid I/DD Waiver program eligibility decision. Testimony regarding his administration of the IPE to the Appellant was given little weight in the decision of the Hearing Officer. [REDACTED] testimony regarding his IPE administration was insufficient to establish that [REDACTED] IPE was

required to address testing instructions and an explanation for changes in historical diagnosis and functioning. The reliability of [REDACTED] IPE cannot be ruled out.

Diagnosis

To be eligible for the Medicaid I/DD Waiver Program, the IPE had to confirm the Appellant's diagnosis of a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22. The February 2024 IPE did not corroborate the presence of an eligible diagnosis.

Functionality

Eligibility for Medicaid I/DD Waiver must be established in each of the categories supplied by the policy. To be eligible for the Medicaid 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.

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 26th day of April 2024.

Tara B. Thompson, MLS
State Hearing Officer