



April 30, 2024



RE: [REDACTED] A PROTECTED INDIVIDUAL, v. WVDohS
ACTION NO.: 24-BOR-1907

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-1907

**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 April 24, 2024.

The matter before the Hearing Officer arises from the March 27, 2024, 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 appeared *pro se*. Appearing as witnesses for the Appellant were ■ Chief Medical Officer/Licensed Psychiatrist, ■, and ■ Case Manager, ■. 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 March 27, 2024
- D-3 Independent Psychological Evaluation dated March 25, 2024
- D-4 Completion/Interruption of County Special Education Services, ■ Schools, dated May 23, 2014
- D-5 Prior Written Notice of District's Proposal/Refusal, ■ Schools, dated February 21, 2014
- D-6 Individualized Education Program, ■ Schools, dated March 19, 2013

- D-7 Notice of Eligibility Committee and/or Individualized Education Program Team Meeting, ██████████ Schools, dated March 8, 2013
- D-8 Confidential Psychological Evaluation dated May 16, 2001
- D-9 HCHI Forensic Services report dated August 2, 2023

Appellant's Exhibits:

None

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 28 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 March 27, 2024, indicating that her I/DD Waiver application was denied (Exhibit D-2).
- 3) The March 27, 2024, notice states that the Appellant's I/DD Waiver application was denied because "Documentation submitted for review does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility" (Exhibit D-2).
- 4) The Respondent identified one substantial adaptive deficit for the Appellant in the functional area of *Learning*. However, three deficits are required to meet I/DD Waiver functionality criteria (Exhibit D-2).
- 5) The Respondent conceded that the Appellant has an eligible diagnosis of Moderate Intellectual Disability.
- 6) An Independent Psychological Evaluation (IPE) was completed for the Appellant on March 25, 2024 (Exhibit D-3).
- 7) The IPE lists diagnoses of "Moderate Intellectual Disability, Bipolar I Disorder, Sexual Abuse of a Child, suspected, Alcohol Use Disorder, currently in remission in controlled environment, and Cannabis Use Disorder, currently in remission in controlled environment" (Exhibit D-3).
- 8) The Appellant has communication skills (functional area of *Receptive or Expressive Language*) (Exhibit D-3).
- 9) The Appellant ambulates independently without the use of mechanical aids (functional area of *Mobility*) (Exhibit D-3).

- 10) The Appellant can dress, bathe, groom, and eat independently, and make simple meals (functional area of *Self-Care*) (Exhibit D-3).
- 11) The Appellant can make simple choices if given two options. She enjoys sketching, painting, and shopping but has poor perseverance (functional area of *Self-Direction*) (Exhibit D-3).
- 12) The Appellant has lived independently and can wash dishes, do laundry, sweep, and do some cleaning tasks. She has poor judgment with friends, many of whom have gotten her into trouble. She contacted the electric company when her electricity went off and contacted churches or local missions when she had no food or money. The Appellant has made her own doctor's appointments and self-administered medications. The Appellant has no employment skills and has never held gainful employment. She has poor judgment concerning safety (functional area of *Capacity for Independent Living*) (Exhibit D-3).
- 13) The Respondent considers scaled scores of 1 and 2 as program-eligible scores on the Adaptive Behavior Assessment System, Third Edition (ABAS-3). The Appellant received the following ABAS-3 scores (Exhibit D-3):
 - Communication -3 (ineligible score for functional area of *Receptive or Expressive Language*).
 - Community Use- 1 (eligible score for one sub-domain of *Capacity for Independent Living*).
 - Functional Academics- 1 (eligible score for functional area of *Learning*).
 - Home Living- 7 (ineligible score for one sub-domain of *Capacity for Independent Living*).
 - Health and Safety- 1 (eligible score for one sub-domain of *Capacity for Independent Living*).
 - Leisure- 5 (ineligible score for one sub-domain of *Capacity for Independent Living*).
 - Self-Direction- 6 (ineligible score for functional area of *Self-Direction*).
 - Social- 7 (ineligible score for one sub-domain of *Capacity for Independent Living*).
- 14) The Appellant received special education services in school (Exhibits D-3, D-4, D-5, D-6, and D-7).
- 15) The Appellant has had multiple hospitalizations for mental health treatment (Exhibit D-3).
- 16) The Appellant's children were removed from her household due to neglect issues (Exhibit D-3).
- 17) The Appellant was found incompetent to stand trial for three counts of sexual assault and contributing to the delinquency of a minor (Exhibit D-3).

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. In addition, the applicant must meet functionality criteria by exhibiting substantial deficits in at least three of the six major life areas identified in I/DD Waiver policy.

The Respondent's representative, Charley Bowen, Long-Term Care Clinical Consultant for PC&A, conceded the Appellant's program-eligible diagnosis, but indicated that the Appellant only meets functionality criteria in the area of *Learning*. She is ambulatory and communicates her wants

and needs verbally; therefore, she is not substantially limited in the functional areas of *Mobility* and *Receptive or Expressive Language*. The Appellant received program-ineligible ABAS-3 scores in the areas of *Self-Care* and *Self-Direction*, and narrative information contained in the IPE indicates that she possesses functionality in those areas. The Appellant received two program-eligible scores in the six sub-domains of *Capacity for Independent Living* in the categories of Community Use and Health & Safety; however, eligible scores in three sub-domains are required to establish a deficit in that functional area.

██████████, Chief Medical Officer at ██████████, testified that the Appellant received active treatment while enrolled in school, is currently receiving active treatment at ██████████, and will continue to require active treatment. She stated that the Appellant lacks self-direction skills and was supervised by her mother and sister when she lived independently. She also resided with a boyfriend and participated in drug use. ██████████ opined that the Appellant has not functioned well in the community and does not understand safety. The Appellant's reported leisure activities stem from her residency in the hospital and the Appellant would not pursue the activities on her own. The Appellant requires prompting for self-care tasks and her lack of home living skills resulted in her children being legally removed from her household due to neglect.

██████████ testified that the Appellant was accompanied to her IPE by a transporter who was unfamiliar with the Appellant's abilities and deficiencies. She stated that information provided to the evaluator came from the Appellant and that the Appellant exaggerated her abilities. She stated that she does not believe the Appellant has bipolar disorder, that the Appellant is currently on no medications for that disorder, and that the Appellant's mood issues were likely situational.

While the Appellant clearly faces many challenges, the ABAS-3 scores and narrative information submitted for review do not confirm the presence of three substantial functional deficits in the six major life areas identified in I/DD Waiver Program policy. 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) The Appellant meets diagnostic criteria for the program.
- 3) To meet functionality criteria, an individual must have substantial deficits in at least three of the six major life areas identified in I/DD Waiver policy.
- 4) Based on information provided for review, only one substantial deficit could be identified for the Appellant.
- 5) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet functionality 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 eligibility.

ENTERED this 30th Day of April 2024.

**Pamela L. Hinzman
State Hearing Officer**