



June 5, 2024



RE: ██████████ A PROTECTED INDIVIDUAL vs. WVDoHS  
BOR Action No.:24-BOR-2071

Dear ██████████

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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

cc: BMS/PC&A/ACENTRA

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

█ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 24-BOR-2071**

**WEST VIRGINIA DEPARTMENT OF  
HUMAN SERVICES  
BUREAU FOR FAMILY ASSISTANCE,**

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on May 30, 2024, on appeal filed April 25, 2024.

The matter before the Hearing Officer arises from the April 7, 2024 decision by the Respondent to deny the Appellant's application for services under the I/DD Waiver program.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist for the Bureau of Medical Services . The Appellant was represented by his mother, █ All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §§513.6 - 513.6.3
- D-2 Notice of Decision dated April 7, 2024
- D-3 Independent Psychological Evaluation dated March 27, 2024
- D-4 Independent Psychological Evaluation dated November 15, 2023
- D-5 Notice of Decision dated January 9, 2024
- D-6 █ Board of Education Parent Report
- D-7 Autism Team Report dated November 16, 2023
- D-8 █ Schools Individualized Education Program dated December 14, 2023
- D-9 Diagnostic and Treatment Plan dated October 23, 2023
- D-10 Child Psychological Report dated November 8, 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 is an 11-year-old child.
- 2) The Appellant, through his mother, applied for benefits and services through the Respondent's Intellectual/Developmental Disabilities Waiver (I/DD) services program.
- 3) On November 15, 2023, an Independent Psychological Evaluation (IPE) (Exhibit D-4), a requirement of the application process, was completed with the Appellant and his mother.
- 4) The Appellant was diagnosed on the IPE with Autism Spectrum Disorder Level 1 and Anxiety Disorder-Unspecified.
- 5) On January 9, 2024, the Respondent issued a Notice of Decision (Exhibit D-5) to the Appellant advising him that his application had been denied because "documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe." Additionally, the notice stated "documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas-self-care, receptive or expressive language, learning, mobility, self-direction, capacity for independent living.
- 6) The Notice of Denial (Exhibit D-5) noted that the Appellant had the right to a second psychological evaluation within 60 calendar days.
- 7) The Appellant exercised his right to a second psychological evaluation.
- 8) On March 27, 2024, a second IPE (Exhibit D-3) was completed with the Appellant and his mother.
- 9) The Appellant was diagnosed on the second IPE with Autism Spectrum Disorder (Level 1), Generalized Anxiety Disorder (with panic traits), and Disruptive Mood Dysregulation Disorder with oppositional defiant traits.

- 10) On April 7, 2024, the Respondent issued a Notice of Decision (Exhibit D-2) to the Appellant advising him that his application had been denied because “documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe. Further, the need for an ICF level of care is not supported by the documentation submitted for review” Additionally, the notice stated “documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas-self-care, receptive or expressive language, learning, mobility, self-direction, capacity for independent living.

### **APPLICABLE POLICY**

**Bureau for Medical Services Provider Manual §513.6.2** states that to be eligible to receive 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.

#### **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, if severe and chronic in nature, may 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 Disability 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 disability.

Additionally, the applicant who has a 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**

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 75<sup>th</sup> percentile when derived from Intellectual Disability (ID) normative populations when ID 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.

### **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**

Policy requires that an applicant for I/DD Waiver services must have written documentation that they meet eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of the IPE report completed by a member of the Independent Psychological network. The Respondent contracts with Psychological Consultation

and Assessment (PC&A) as the MECA to determine applicant eligibility for the I/DD Waiver Program. The MECA determines 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 about the Appellant's I/DD Waiver eligibility.

To be determined eligible for the I/DD Waiver program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment, and the requirement of ICF/IID level of care. Based on the information and evaluations submitted for review, the Appellant failed to meet the diagnostic and functionality eligibility criteria. Eligibility is established in the diagnostic area when an individual presents a diagnosis of an Intellectual Disability, or a related condition which constitutes a severe, and chronic disability with concurrent substantial deficits which manifested prior to age 22. Eligibility is established in the functionality area when an individual presents three substantial deficits in the six outlined life areas. The Appellant requested this fair hearing as an appeal to the Respondent's determination. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic eligibility standards.

During the application process, the Appellant had two IPEs administered by an evaluating psychologist. The first IPE (Exhibit D-4), conducted by Psychological Assessment and Intervention Services on November 15, 2023, concluded and diagnosed the Appellant with Autism Spectrum Disorder (Level 1) and Anxiety Disorder (Unspecified). As a measure of the Appellant's intellectual functioning, an Weschler Intelligence Scale Children (WISC), was administered and the Appellant presented a Full-Scale Intellectual Quotient (IQ) of 107, which the evaluating psychologist summarized as an "average range of intellectual ability." Additionally, an Adaptive Behavior Assessment (ABAS-III) was administered which yielded an eligible score in Social, a subcomponent of Capacity for Independent Living. The Appellant failed to present additional scores in other remaining subcomponents of Capacity for Independent Living to be considered substantially deficient in that life area.

On January 9, 2024, the Respondent initially denied the Appellant's application for I/DD Waiver services citing that the Appellant failed to present an eligible diagnosis for program eligibility or present substantial adaptive deficits in three or more of the major life areas. (Exhibit D-5) However, the Appellant and his mother elected to exercise their right to a second medical evaluation. On March 27, 2024, a second IPE (Exhibit D-3) was conducted by Premier Psychological Solutions, which concluded and diagnosed the Appellant with Autism Spectrum Disorder (Level 1), Generalized Anxiety Disorder, and Disruptive Mood Dysregulation Disorder with oppositional defiant traits. An administered WISC, documented the Appellant's Full-Scale IQ at 98, which was considered the "average range for intellectual ability". An ABAS-III yielded eligible scores in Self-Care and Social; however, the narrative descriptions outlined in the evaluation failed to support a deficit in the life area; specifically, in self-care as it is documented that "[The Appellant] requires a lot of prompting to complete his personal hygiene, but he is able to do so independently".

Charley Bowen, Psychological Consultant-Bureau of Medical Services, testified that Autism Spectrum Disorder (ASD) is considered a related condition under program guidelines; however,

ASD must meet the severity criteria and be rated a Level 3 based on the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). Mr. Bowen expounded that the Appellant's diagnosis outlined on IPE failed to meet the severity criteria to establish eligibility. During the IPE process, the Appellant was administered multiple achievement tests, which based on the documented information in both IPEs, Mr. Bowen reported that the Appellant failed to present a diagnosis of an Intellectual Disability or a related condition which met the severity criteria. Mr. Bowen also reported that the information provided in the administered test failed to support the presence of substantial adaptive deficits in three or more of the evaluated life areas.

The Appellant's mother offered no contention to the documented diagnoses in the IPEs or the severity of the diagnoses. The Appellant's mother purported that the Appellant's anxiety disorders inhibited his ability to perform in an educational setting this school year and he was required to be placed on home bound schooling, which resulted in a financial strain on her household because she was no longer able to work.

Based on a review of the evidence, the Appellant failed to meet the diagnostic and functionality criteria outlined by governing policy. During the IPEs, the Appellant's diagnosis of Autism Spectrum Disorder, Level 1, failed to meet the program guidelines of an Intellectual Disability or related condition which is considered severe or chronic in nature. Additionally, the Appellant demonstrated no substantial deficits in the six major life areas defined by policy. Because the Appellant failed to meet the diagnostic and functionality criteria, the Respondent's decision to deny the Appellant's application for I/DD Waiver services is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that an individual must meet the medical eligibility criteria of a diagnosis of an Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) Policy requires that an individual must demonstrate substantial deficits in at least three of six identified major life areas including self-care, communication, functional academics, mobility, self-direction, and capacity for independent living.
- 3) The Appellant was diagnosed with Autism Spectrum Disorder, Level 1, which does not meet the severity criteria.
- 4) During the IPE, the Appellant presented no substantial adaptive deficits to meet the functionality criteria.
- 5) The Appellant failed to meet the diagnostic criteria threshold for services under the I/DD Waiver program.
- 6) The Appellant failed to meet the functionality criteria threshold for services under the I/DD Waiver program.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's application for services under the I/DD Waiver program.

**ENTERED this \_\_\_\_\_ day of June 2024.**

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Eric L. Phillips  
**State Hearing Officer**