



June 27, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS
ACTION NO.: 24-BOR-2272

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 people 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, BMS
Kerri Linton, PC&A
Janice Brown, Acentra

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

[REDACTED],

Appellant,

v.

Action Number: 24-BOR-2272

**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 [REDACTED]. 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 June 26, 2024.

The matter before the Hearing Officer arises from the Respondent's denial of Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program benefits as outlined in a notice dated March 27, 2024.

At the hearing, the Respondent appeared by Kerri Linton, Long-Term Care Clinical Consultant, Psychological Consultation & Assessment (PC&A). The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [REDACTED] the Appellant's aunt. 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 Denial dated March 27, 2004
- D-3 Independent Psychological Evaluation (IPE) dated March 21, 2024
- D-4 Report of Social Emotional Classroom Behavior dated August 16, 2000
- D-5 Psychological Assessment Report, [REDACTED] Schools Special Education Department, dated June 18, 2000
- D-6 [REDACTED] Board of Education Special Education Department Observation Report dated November 15, 2000
- D-7 [REDACTED] for Child Development report dated April 2, 1998

- D-8 Psychological Evaluation dated January 10, 2000
- D-9 Psychoeducational Services Confidential Diagnostic Report dated October 5, 2004
- D-10 [REDACTED] Schools Special Education Department Classroom Teacher's Report dated October 4, 2004
- D-11 Student Observation Report, [REDACTED] Schools, dated October 13, 2004
- D-12 Results of Speech/Language Evaluation dated December 3, 2004
- D-13 Report of Psychological Evaluation for [REDACTED] Schools dated December 18, 2001
- D-14 Individualized Education Program (IEP), [REDACTED] Schools, dated January 23, 2007
- D-15 IEP, [REDACTED] Schools, dated January 27, 2006
- D-16 IEP, [REDACTED] Schools, dated March 8, 2005

Appellant's Exhibits:

- A-1 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 31 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 Medicaid application was denied because "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" (Exhibit D-2).
- 4) The Respondent identified no substantial adaptive deficits for the Appellant as a result of information submitted for review (Exhibit D-2).
- 5) An Independent Psychological Evaluation (IPE) was completed for the Appellant on March 21, 2024 (Exhibit D-3).
- 6) The IPE lists diagnoses of Mild Intellectual Disability and Post Traumatic Stress Disorder, chronic (Exhibit D-3).
- 7) The Respondent conceded that Mild Intellectual Disability is a potentially eligible diagnosis for the I/DD Waiver Program.

- 8) The Appellant can dress and undress herself independently but requires physical assistance with fastening buttons and tying shoes. She can wash her hair and body independently but requires physical assistance with hair brushing. The Appellant toilets independently and can brush her teeth (but often will not). The Appellant makes simple meals and heats items in the microwave oven independently. She requires physical assistance with cutting food (functional area of *Self-Care*) (Exhibit D-3).
- 9) The Appellant can communicate her wants and needs verbally without the use of an assistive device (functional area of *Receptive or Expressive Language*) (Exhibit D-3).
- 10) The Appellant ambulates independently without the use of mechanical aids (functional area of *Mobility*) (Exhibit D-3).
- 11) The Appellant can make simple choices if given two options. She enjoys reading books and has no problems with changes in routine. She is shy and often will not order for herself in restaurants and has poor perseverance when faced with difficult tasks. If left alone, she would not likely complete activities of daily living and would only complete preferred activities (functional area of *Self-Direction*) (Exhibit D-3).
- 12) The Appellant can wash her own clothing and heat items in the microwave oven but cannot perform any other chores. She does not have friends and typically keeps to herself. She sometimes attends church and dines with a member of the congregation. The Appellant would be unable to use community resources independently and would not know who to call if she had no food or utility services. The Appellant would be an easy target for predators in the community. The Appellant is aware of safety issues, such as looking both ways when crossing the street, and is frightened by sharp objects. She can communicate if she is ill but cannot take over-the-counter medications without assistance. The Appellant has never been employed and has no employment skills (functional area of *Capacity for Independent Living*) (Exhibit D-3).
- 13) The Appellant attained a full-scale IQ score of 63 during the March 2024 IPE and likely functions in “a mild intellectual disability range” (Exhibit D-3).
- 14) The Respondent considers scaled scores of 1 and 2 as I/DD Waiver program- eligible scores on the Adaptive Behavior Assessment System-Third Edition (ABAS-3)
- 15) The Appellant received scaled scores ranging from 3 to 9 in adaptive skills areas on the ABAS-3 administered during the March 2024 IPE (Exhibit D-3).
- 16) The Respondent considers scores of 55 and below as eligible I/DD Waiver Program scores on the Wide Range Achievement Test-Fifth Edition (WRAT-5).
- 17) The Appellant achieved the following WRAT-5 scores during the March 2024 IPE: word reading- 74; spelling- 71; math computation- 63; sentence comprehension- 80; and reading composite- 75 (functional area of *Learning*) (Exhibit D-3).

- 18) The Appellant has no significant aggressive or self-harming behaviors (Exhibit D-3).
- 19) The Appellant demonstrated below average scores in academic performance in first grade (Exhibit D-4).
- 20) The Appellant received speech/language therapy while in school, was diagnosed with a learning disorder, and had recorded IQ test scores of 77 and 78 in the year 2000 (Exhibits D-5, D-8, and D-12).
- 21) The Appellant has a history of developmental delays (Exhibit D-7).
- 22) The Appellant displayed significant weaknesses in academic areas on a Diagnostic Report completed in 2004 (Exhibit D-9).
- 23) A Psychological Evaluation Report completed in 2001 rated the Appellant's level of functioning in the mildly mentally impaired range, with some measurements in the borderline low average range (Exhibit D-13).
- 24) The Appellant was enrolled in special education classes while attending ██████████ Schools and had an Individualized Education Program (Exhibits D-14, D-15, and D-16).
- 25) The Appellant graduated from high school with a regular diploma (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 medically for the I/DD Waiver Program, policy states 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.

Kerri Linton, Long-Term Care Clinical Consultant for PC&A, conceded that the Appellant has a potentially eligible diagnosis for the I/DD Waiver Program; however, no substantial adaptive deficits could be identified for the Appellant based on the March 2024 IPE and the additional documentation submitted for review.

The Appellant's aunt testified that she worries about who will care for the Appellant in the future as the Appellant cannot make phone calls, drive, or manage money. The Appellant requires assistance with some self-care tasks and can only make simple meals.

While it is clear that the Appellant has many challenges related to her intellectual disability, evidence does not reveal the presence of substantial adaptive deficits in three of the six major life areas identified in policy.

CONCLUSIONS OF LAW

- 1) To qualify for I/DD Waiver Medicaid benefits, an individual must meet the diagnostic, functionality, and severity criteria.
- 2) The Respondent conceded that the Appellant meets the program's diagnostic criteria.
- 3) To meet functionality criteria, an individual must demonstrate substantial deficits in at least three of the six major life areas identified in policy.
- 4) Based on the evidence submitted for review and testimony provided during the hearing, no substantial adaptive deficits 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 the Appellant's I/DD Waiver Medicaid application.

ENTERED this 27th day of June 2024.

**Pamela L. Hinzman
State Hearing Officer**