



July 8, 2024



RE: [REDACTED], A JUVENILE v. WV DoHS/BMS
ACTION NO.: 24-BOR-2114

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: Recourse to Hearing Decision
Form IG-BR-29

cc: Stacy Broce, Bureau for Medical Services
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-2114

**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 June 5, 2024.

The matter before the Hearing Officer arises from the Respondent's March 23, 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, Psychological Consultation and Assessment (PC&A). Observing on behalf of the Respondent was Charley Bowen, PC&A. The Appellant appeared by █ the Appellant's mother. All witnesses were placed under oath and the following documents were admitted as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Policy Excerpts
- D-2 Notice, dated March 23, 2024
- D-3 Independent Psychological Evaluation, dated February 29, 2024
- D-4 █ Letter

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) On March 23, 2024, the Respondent issued a notice advising the Appellant the initial Medicaid I/DD Waiver Program application was denied because the provided documentation did not indicate a present diagnosis of Intellectual Disability or a Related Condition that is severe (Exhibit D-2).
- 2) On January 12, 2024, the Appellant's board-certified pediatric primary care nurse practitioner, [REDACTED] conducted formal developmental testing with the Appellant (Exhibit D-4).
- 3) By undated letter narrative, [REDACTED] indicated the Appellant met diagnostic criteria for autism spectrum disorder, level 3 (Exhibit D-4).
- 4) On February 29, 2024, [REDACTED] a licensed psychologist, conducted an Independent Psychological Evaluation (IPE) with the Appellant (Exhibit D-3).
- 5) [REDACTED] reviewed the Appellant's January 2024 medical records (Exhibit D-3).
- 6) [REDACTED] reviewed [REDACTED] January 2024 diagnosis of the Appellant (Exhibit D-3).
- 7) [REDACTED] administered Adaptive Behavior Assessment System, 3rd Edition (ABAS-3)-primary caregiver form; Autism Spectrum Rating Scale (ASRS); and Developmental Profile, Fourth Edition (DP-4) (Exhibit D-3).
- 8) [REDACTED] interviewed the Appellant and [REDACTED] (Exhibit D-3).
- 9) [REDACTED] narrative reflected that [REDACTED] ABAS-3 responses appear to be consistent with [REDACTED] reports in the interview and behavioral observations, however, the narrative stipulates, "It is unclear if [the Appellant's] scores are consistent with his level of functioning as his intellectual skillset was unable to be assessed" (Exhibit D-3).
- 10) [REDACTED] narrative reflected that [REDACTED] ASRS ratings indicated the Appellant displays significant characteristics of autism spectrum disorder and that her responses were "generally consistent" with the Appellant's observed presentation during the evaluation and self-report (Exhibit D-3).
- 11) [REDACTED] diagnosed the Appellant with "Autism Spectrum Disorder, Level 2, Requiring Substantial Support, With Language Impairment" (Exhibit D-3).

12) The Respondent considered [REDACTED] letter and the February 29, 2024 IPE when determining the Appellant's Medicaid I/DD Waiver program eligibility (Exhibit D-2).

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 a 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 § 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

The Appellant applied for and was denied Medicaid I/DD Waiver program eligibility because the submitted documentation failed to establish the presence of an eligible diagnosis. The Appellant contested the Respondent's denial and argued the Appellant's physician had diagnosed the Appellant with a qualifying diagnosis.

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 stipulates that the eligible condition must be severe and chronic. The Appellant's eligibility cannot be based on a diagnostic letter. The Respondent was required to make the Appellant's I/DD Waiver program eligibility determination based on an IPE that corroborates the current presence of a severe and chronic related condition. To be eligible for the Medicaid I/DD Waiver Program, the Appellant must meet the medical eligibility criteria in each category, including diagnosis.

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.

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.

The evidence revealed that [REDACTED] considered the Appellant's January 2024 medical records and diagnosis when evaluating the Appellant. After administering relevant tests, reviewing the Appellant's previous diagnosis, and conducting the assessment [REDACTED] diagnosed the

Appellant with autism spectrum disorder, level 2.

The policy requires that the presence of an eligible diagnosis be confirmed by an IPE conducted by a qualifying provider. No evidence was submitted to refute [REDACTED] status as an eligible provider. While the physician's letter reflects a previous autism spectrum disorder, level 3 diagnosis, the Respondent's representative and the Board of Review are required to consider the IPE diagnosis when determining the Appellant's eligibility for the Medicaid I/DD Waiver program. As the submitted evidence did not reveal the presence of autism spectrum disorder, level 3, or another eligible condition as corroborated by the IPE, the Appellant's eligibility for the Medicaid I/DD Waiver program cannot be affirmed.

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.
- 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 8th day of July 2024.

Tara B. Thompson, MLS
State Hearing Officer