



July 18, 2024

[REDACTED]

RE: [REDACTED] a Protected Individual, v. WVDoHS
ACTION NO.: 24-BOR-2367

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**

█ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 24-BOR-2367

**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 July 10, 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 April 11, 2024.

At the hearing, the Respondent appeared by Charley Bowen, Licensed Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant appeared at the hearing and was represented by his mother, █. Appearing as a witness for the Appellant was █ teacher's aide, █ Schools. 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 April 11, 2024
- D-3 Independent Psychological Evaluation (IPE) dated April 4, 2024
- D-4 Letter from █ M.D., █ for Children, dated February 19, 2009
- D-5 Individualized Education Program, █ Schools, dated September 7, 2023

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 16 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 April 11, 2024, indicating that his I/DD Waiver application was denied (Exhibit D-2).
- 3) The April 11, 2024, notice states that the Appellant's I/DD Waiver Medicaid application was denied because "documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe. Arthrogryposis does not meet the policy definition of a severe Related Condition" (Exhibit D-2).
- 4) The Appellant underwent an Independent Psychological Evaluation (IPE) on April 4, 2024 (Exhibit D-3).
- 5) The IPE lists a diagnosis of arthrogryposis multiplex congenita, osteopenia, a rare condition that causes stiff or frozen joints, contractures, and low bone density (Exhibit D-3).
- 6) The Appellant has severe contractures of both arms. His shoulders are fused and rotated, and he has limited use of his arms and hands (Exhibit D-3).
- 7) The Appellant is prone to bone fractures (Exhibit D-3).
- 8) During the April 2024 IPE, the Appellant attained the following scores on the Weschler Adult Intelligence Scale-Fourth Edition (WAIS-IV): Verbal Comprehension Index- 87; Perceptual Reasoning Index- 84; and Working Memory Index- 97. These scores place the Appellant's intellectual functioning in the low average to average range. The Respondent considers scores of 69 and below as I/DD Program-eligible scores on the WAIS-IV (Exhibit D-3).
- 9) The Appellant achieved the following scores on the Wide Range Achievement Test-5 (WRAT-5): Word Reading- 102; Spelling- 98; Math Computation- 78; Sentence Comprehension- 106; and Reading Composite- 104. The Respondent considers scores of 55 and below as program-eligible scores on the WRAT-5 (Exhibit D-3).

- 10) The Appellant functions at the 12th grade level in word reading, the 10th grade level in spelling, the 4th grade level in mathematics, and above the 12th grade level in reading comprehension (Exhibit D-3).
- 11) The Appellant demonstrated significant functional delays in Self-Care and Capacity for Independent Living on the Adaptive Behavior Assessment System-Third Edition (ABAS-3) administered during the April 2024 IPE (Exhibit D-3).
- 12) The Appellant has no learning disabilities and is currently enrolled in 100 percent general education at [REDACTED] School (Exhibit D-5).

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. A related condition can be any condition, other than mental illness, found to be closely related to intellectual disabilities because the 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.

Charley Bowen, Licensed Psychologist with PC&A, recognized that the Appellant's condition poses challenges, but testified that the Respondent could identify no intellectual disability for the Appellant based on the information submitted for review.

██████████ who has served as the Appellant's teacher's aide for several years, testified that the Appellant is very intelligent, but lacks fine motor skills and is unable to perform many tasks. She addressed the Appellant's mobility challenges and believes the Appellant is deficient in the functional area of mobility. The Appellant's mother, ██████████ testified that the wording of the I/DD policy is confusing in regard to diagnoses that can qualify as related conditions for the Waiver program. Both ██████████ and ██████████ addressed the rarity of the Appellant's condition.

While it is clear that the Appellant has many physical challenges related to his medical condition, he does not have a diagnosis of intellectual disability, or a condition found to be closely related to intellectual disability. Therefore, the Respondent acted correctly in denying the Appellant's I/DD Waiver application.

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's arthrogyrosis diagnosis does not meet diagnostic criteria for the I/DD Waiver Program as it is not related to an intellectual disability.
- 3) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet diagnostic 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 18th day of July 2024.

**Pamela L. Hinzman
State Hearing Officer**