



August 8, 2024

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 24-BOR-2568

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 assure 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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Stacy Broce, Department Representative
Janice Brown, Department Representative
Kerri Linton, Department Representative

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

■ A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 24-BOR-2568

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on July 25, 2024, upon a timely appeal filed on June 25, 2024.

The matter before the Hearing Officer arises from the May 24, 2024 decision by the Respondent to deny participation in the I/DD Waiver Program based on unmet medical eligibility.

At the hearing, the Respondent appeared by Charlie Bowen. The Appellant appeared pro se. Appearing as his representatives and witnesses were ■ All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 BMS Provider Manual, Chapter 513 (excerpt)
- D-2 Notice of decision, dated May 24, 2024
- D-3 Independent Psychological Evaluation (IPE), dated April 15, 2024
- D-4 Individualized Education Program (IEP), ■ Schools
IEP Meeting Date: May 11, 2023

Appellant's Exhibits:

A-1 Email dated July 15, 2024
 [REDACTED] Short Test Skills Plan, dated March 22, 2024

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, a 20-year-old, applied for the Intellectual and Developmental Disabilities (IDD) Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDD Waiver Program, including eligibility determination.
- 3) Charlie Bowen, a licensed psychologist employed by PC&A, reviewed the eligibility determination regarding the Appellant.
- 4) The Respondent mailed the Appellant a letter dated May 24, 2024, denying the Appellant's application. (Exhibit D-2)
- 5) This notice (Exhibit D-2) provided the basis for the denial as "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."
- 6) The notice (Exhibit D-2) further noted that the Appellant was awarded a deficit in one (1) area: *Learning*.
- 7) The Appellant was assessed in an evaluation (Exhibit D-3) conducted on April 15, 2024.
- 8) During the April 2024 (Exhibit D-3) assessment of the Appellant, the Adaptive Behavior Assessment System, Third Edition (ABAS-3), was utilized to measure the Appellant's adaptive behavior.
- 9) The ABAS-3 is an instrument producing standard scores with a mean of ten (10), a standard deviation of three (3), and eligible scores of one (1) or two (2).
- 10) The Appellant obtained eligible scores on the April 2024 ABAS-3 in the skill areas of *Leisure* and *Social*. (Exhibit D-3)

- 11) *Social Skills* and *Leisure Activities* are two subdomains of the *Capacity for Independent Living* major life area.
- 12) The Appellant's April 2024 ABAS-3 scores did not meet the criteria for a deficit in any major life area. (Exhibit D-3)
- 13) The Respondent awarded the Appellant with a deficit in the area of *Learning* based on his results on the WRAT-5 during the April 2024 assessment. (Exhibit D-3)

APPLICABLE POLICY

The policy regarding the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513.

At §513.6.2, this policy addresses initial medical eligibility, and reads, "...In order to be eligible to receive IDDW 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."

At §513.6.2.2, this policy addresses functionality, and reads, "The applicant must have substantial deficits in at least three of the six identified major life areas...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 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."

DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent's decision to deny the Appellant's I/DD Waiver application based on an unfavorable medical eligibility finding. The Respondent must prove by a preponderance of the evidence that it acted correctly to deny the I/DD application on this basis.

I/DD medical eligibility is divided into four components, each required for overall eligibility. The Respondent's denial of the Appellant's application is based on an unmet functionality component. The Appellant must have substantial deficits, as defined in policy, in at least three (3) of the six (6) major life areas identified in policy.

The Appellant does not have the functionality scores to establish medical eligibility for the I/DD Waiver Program. The Appellant was assessed using the ABAS-3. Mr. Bowen testified to his education and credentials and established himself as an expert administering and interpreting the results of this instrument. [REDACTED] testified that he has a bachelor's degree in clinical psychology and testified that he has worked in group homes with individuals on the I/DD Waiver Program. Mr. Bowen and [REDACTED] disagreed about a critical fact in this hearing: the standard deviation for the ABAS-3 testing instrument. Mr. Bowen testified in this hearing, in addition to many prior hearings for the same issue, that the standard deviation is three (3). [REDACTED] testified, first that he believed the standard deviation was two (2) and, later, that it was two (2). Mr. Bowen consulted a manual for the instrument which could not be admitted. It is more convincing that the standard deviation is three (3), as it has been reported in dozens, if not hundreds of prior hearings.

The Appellant submitted evidence for the hearing. The evidence includes test results for the Appellant. Without proper foundation and testimony to clarify their concordance with policy requirements for testing instruments, the probative value of these results is unknown. If these test results were of value to the Respondent, it is unclear why the Appellant did not submit the results (obtained in March 2024) with their April 2024 application. The results are not given weight for these reasons.

Without reliance on the standard deviation factor, the Appellant is clearly not medically eligible for I/DD participation. The Appellant's ABAS-3 scores were only favorable in two subdomains, and these represent an insufficient portion of the Capacity for Independent Living to be awarded this major life area (policy requires three subdomains for the establishment of a deficit in the area as a whole). Another testing instrument produced an eligible score for Learning, but with only one (1) major life area established the Appellant has neither met the functionality component nor the medical eligibility requirements for the program.

CONCLUSIONS OF LAW

- 1) Because the Appellant does not have deficits in three (3) major life areas, he has not met the functionality component of medical eligibility.
- 2) Because the Appellant did not meet the medical eligibility requirements, the Respondent must deny the Appellant's application for the I/DD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant's application for the I/DD Waiver Program.

ENTERED this _____ day of August 2024.

**Todd Thornton
State Hearing Officer**