



August 30, 2024



RE: ██████████ A JUVENILE v. WV DoHS/BMS  
ACTION NO.: 24-BOR-2617

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 (DoHS). 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  
Kerri Linton, Psychological Consultation and Assessment  
Janice Brown, Acentra

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

██████████ A JUVENILE,

**Appellant,**

v.

**Action Number: 24-BOR-2617**

**WEST VIRGINIA DEPARTMENT OF  
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 August 7, 2024.

The matter before the Hearing Officer arises from the Respondent's May 29, 2024 decision to deny the Appellant eligibility for the Medicaid Intellectual/Developmental Disabilities (I/DD) Waiver program.

At the hearing, the Respondent appeared by Charley Bowen, Psychological Consultation and Assessment. Observing for the Respondent was Crystal Dotson, PC&A

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual Excerpts
- D-2 Notice, dated May 29, 2024
- D-3 Independent Psychological Evaluation (IPE), dated April 29, 2024
- D-4 Child Health Assessment, dated November 28, 2023
- D-5 Eligibility Committee Report, ██████████
- D-6 Individualized Education Program, dated April 16, 2024

**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 May 29, 2024, the Respondent issued a notice advising the Appellant her application for Medicaid I/DD Waiver program eligibility was denied because the submitted documentation failed to indicate an eligible diagnosis of Intellectual Disability or a related condition that is severe (Exhibit D-2).
- 2) On January 12, 2024, a Child Health Assessment form was completed by [REDACTED] (Exhibit D-4).
- 3) The Child Health Assessment form reflected *Autism* as the handwritten response to *Abnormal/Comments in Developmental* (Exhibit D-4).
- 4) The Child Health Assessment form reflected *Autism Spectrum Disorder, Speech Delay* under *Health Problems or Special Needs* (Exhibit D-4).
- 5) On April 16, 2024, the Appellant’s Eligibility Committee determined she was eligible for special education with *Developmental Delay* listed as the primary area of exceptionality (Exhibit D-5).
- 6) The Appellant’s Individualized Education Program (IEP) reflected, “Specifically, the district is: proposing eligibility of Developmental Delay w/Speech Language Impairment as a related service” (Exhibit D-6).
- 7) The handwritten notated proposal indicated the Appellant met “eligibility requirements with all five domains delayed 25% or greater” (Exhibit D-6).
- 8) The typed notated proposal reflected “[The Appellant’s] evaluation in the areas of health and physical, adaptive, social emotional, cognitive, and speech/language resulted in a delay greater than 25%” (Exhibit D-6).
- 9) [REDACTED] conducted an IPE with the Appellant on April 29, 2024 (Exhibit D-3).
- 10) After conducting testing and interviews with the Appellant, reviewing the information provided by the Appellant’s caregivers, primary care provider, and Individualized Education Plan Eligibility Committee, [REDACTED] diagnosed the Appellant with Global Developmental Delay; Autism Spectrum Disorder (by history); Rule-out autism spectrum disorder level 2 to level 3 (Exhibit D-3).

- 11) The *Findings/Conclusions* narrative provided by ██████████ reflected a recommendation for a “follow-up evaluation of autism spectrum disorder to better understand the severity of her symptoms” (Exhibit D-3).
- 12) The *Recommendation* narrative provided by ██████████ reflected a recommendation that the Appellant “participate in an evaluation of autism spectrum disorder that includes formal evaluation of her behavior in semi-structured situations to better understand the severity of her symptoms” (Exhibit D-3).

### **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 was denied medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation failed to establish the presence of an eligible diagnosis or related substantial functioning deficits. During the hearing, the Appellant's representative argued that the Appellant should be found medically eligible for the Medicaid I/DD Waiver Program because she requires assistance to remain safe and meet her daily living needs.

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 review the IPE report when deciding the Appellant's eligibility. 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 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.

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 stipulates that the eligible condition must be severe and chronic. The Respondent was required to base the Appellant's I/DD Waiver program eligibility determination on an IPE that corroborates the Appellant's current 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 needed by 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 likely to continue indefinitely 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.

To be eligible for the Medicaid I/DD Waiver, the preponderance of the evidence had to demonstrate the presence of an intellectual disability or a related severe and chronic disability attributable to a condition, other than mental illness, that resulted in an impairment of the Appellant's general intellectual functioning or adaptive behavior.

The policy requires the MECA to consider the current diagnostic criteria when reviewing submitted documentation for eligibility. The Respondent's representative testified that global developmental delay does not qualify as an intellectual disability or severe related condition. The evidence revealed that the special education services provided to the Appellant were proposed based on developmental delay with speech/language impairment and because the Appellant's evaluation revealed greater than 25% delays in "cognitive, social-emotional, health and physical and adaptive development as well as speech/language." The evidence revealed that severe autism was not a contributing factor to the Appellant's eligibility for special education.

The narrative of the submitted IPE revealed that the Appellant has a potentially eligible diagnosis of autism spectrum disorder. However, the IPE narrative established that the evaluator could not affirm a diagnosis of severe autism spectrum disorder and recommended subsequent evaluation to determine the level of the diagnosis severity.

The policy requires the presence of an eligible diagnosis to be confirmed by an IPE conducted by a qualifying provider. The parties did not dispute the rater eligibility of [REDACTED] as a qualified provider. As the evidence revealed the submitted IPE was reliable, the Board of Review must 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 a diagnosis of severe autism spectrum disorder or another eligible condition as corroborated by the IPE, the Appellant's eligibility for the Medicaid I/DD Waiver program cannot be affirmed.

During the hearing, testimony was provided regarding the Appellant's severe functioning limitations. To be eligible for the Medicaid I/DD Waiver program, the documentation had to demonstrate that the Appellant had substantial functioning deficits related to an eligible diagnosis in at least three areas as corroborated by the IPE test scores and narrative. Because the preponderance of the evidence failed to establish the presence of an eligible Intellectual/Developmental Disability or related severe diagnosis, the presence of severe functioning deficits related to an eligible diagnosis could not 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 evidence revealed the Appellant did not have a diagnosis of severe autism spectrum disorder.
- 4) 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.
- 5) 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 30<sup>th</sup> day of August 2024.**

---

Tara B. Thompson, MLS  
**State Hearing Officer**