



August 29, 2024

[REDACTED]

RE: [REDACTED] a Protected Individual, v. WVDoHS  
ACTION NO.: 24-BOR-2646

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-2646**

**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 August 21, 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 May 7, 2024.

At the hearing, the Respondent appeared by Charley Bowen, Licensed Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant was represented by her mother, ■. 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 May 7, 2024
- D-3 Independent Psychological Evaluation (IPE) dated April 5, 2024

**Appellant's Exhibits:**

- A-1 WV Birth to Three Evaluation/Assessment Summary Report dated August 27, 2023
- A-2 WV Birth to Three Individual Family Service Plan dated September 12, 2023

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 three 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 May 7, 2024, indicating that her I/DD Waiver application was denied (Exhibit D-2).
- 3) The May 7, 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." (Exhibit D-2).
- 4) The Appellant underwent an Independent Psychological Evaluation (IPE) on April 5, 2024 (Exhibit D-3).
- 5) The IPE indicates that the Appellant became ill with a pneumococcal infection as the result of an ineffective Prevnar vaccination (Exhibit D-3).
- 6) The Appellant displayed significantly delayed cognitive scores on the Developmental Profile-4 (DP-4) evaluation administered as part of the April 2024 IPE (Exhibit D-3).
- 7) The IPE evaluator administered the Gilliam Autism Rating Scale-Third Edition (GARS-3) during the April 2024 evaluation and reported traits consistent with Autism Spectrum Disorder, Level 2 (Exhibit D-3).
- 8) The IPE lists the Appellant's diagnosis as Autism Spectrum Disorder, Level 2, Requiring Substantial Supports, With Language Delay (Exhibit D-3).
- 9) The Respondent requires a diagnosis of Autism Spectrum Disorder, Level 3, Requiring Very Substantial Supports, in order to meet severity requirements for the I/DD Waiver Program.

## **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 75<sup>th</sup> 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, testified that the Respondent's level of autism does not meet requirements for the I/DD Waiver Program. He stated that, while the Appellant has significant challenges, an individual must have a diagnosis of Level 3 Autism to meet severity requirements. As the Appellant ages, Mr. Bowen stated that the Appellant may be diagnosed with an intellectual disability, which could be an eligible diagnosis for the I/DD Waiver Program. Mr. Bowen indicated that an individual can reapply for the I/DD Waiver Program at any time.

██████████ the Appellant's mother, inquired about the differences between Level 2 and Level 3 Autism. While I/DD policy does not specifically designate that Autism must be Level 3 to qualify as a severe related condition, Mr. Bowen testified that Level 3 is the most severe form of Autism and is most likely to be chronic and continue indefinitely. He stated that Level 3 Autism requires very substantial support.

██████████ testified that the Appellant is prone to elopement at night and that her home has been adapted to address her daughter's needs. She stated that the Appellant smears feces and eats/chews inappropriate items. ██████████ indicated that she will have to homeschool the Appellant because the Appellant is prone to pneumococcal infections and is awake all night.

While it is clear that the Appellant has many physical challenges related to her condition, she does not have a diagnosis of intellectual disability, or a condition found to be closely related to intellectual disability that meets severity requirements. 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 diagnosis of Autism Spectrum Disorder, Level 2, does not meet diagnostic/severity criteria for the I/DD Waiver Program.
- 3) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet diagnostic/severity 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 29th day of August 2024.**

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**Pamela L. Hinzman  
State Hearing Officer**