



September 11, 2024



RE: [REDACTED] A PROTECTED INDIVIDUAL vs. WVDoHS  
BOR Action No.: 24-BOR-2470

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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

cc: BMS/PC&A/ACENTRA

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 24-BOR-2470**

**WEST VIRGINIA DEPARTMENT OF  
HUMAN SERVICES  
BUREAU FOR FAMILY ASSISTANCE,**

**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 September 5, 2024, on appeal filed June 12, 2024. The hearing was originally scheduled to convene on August 5, 2024, but continued due to good cause of the Appellant's absence.

The matter before the Hearing Officer arises from the May 10, 2024 decision by the Respondent to deny the Appellant's eligibility for benefits and services under the I/DD Waiver program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau of Medical Services . The Appellant appeared by his mother, ■. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §§513.6 - 513.6.3
- D-2 Notice of Decision dated May 10, 2024
- D-3 Independent Psychological Evaluation dated April 16, 2024
- D-4 Letter from ■, PA-C, dated April 15, 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) The Appellant is a three-year-old child.
- 2) The Appellant, through his mother, applied for benefits and services through the Respondent's Intellectual/Developmental Disabilities Waiver (I/DD) services program.
- 3) On April 16, 2024, an Independent Psychological Evaluation (IPE) (Exhibit D-3), a requirement of the application process, was completed with the Appellant and his mother.
- 4) The Appellant was diagnosed on the IPE with Autism Spectrum Disorder Level 2, Global Developmental Delay, Hydrocephalus, Congenital Heart Disease, Tracheostomy Dependence, and G-Tube Dependence. (Exhibit D-3)
- 5) On May 10, 2024, the Respondent issued a Notice of Decision (Exhibit D-4) to the Appellant advising him that his application had been denied because "documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."

### **APPLICABLE POLICY**

**Bureau for Medical Services Provider Manual §513.6.2** states that to be eligible to receive 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.

### **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, if severe and chronic in nature, may 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 Disability 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 disability.

Additionally, the applicant who has a 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**

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 ID 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.

## **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**

Policy requires that an applicant for I/DD Waiver services must have written documentation that they meet eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of the IPE report completed by a member of the Independent Psychological network. The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the MECA to determine applicant eligibility for the I/DD Waiver Program. The MECA determines 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 about the Appellant's I/DD Waiver eligibility.

To be determined eligible for the I/DD Waiver program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment and the requirement of ICF/IID level of care. Based on the information and evaluations submitted for review, the Appellant failed to meet the diagnostic criteria. Eligibility is established in the diagnostic area when an individual presents a diagnosis of an Intellectual Disability, or a related condition which constitutes a severe, and chronic disability with concurrent substantial deficits which manifested prior to age 22. The Appellant requested this fair hearing as an appeal to the Respondent's determination. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet diagnostic eligibility standards.

On April 16, 2024, the Appellant and his mother completed an IPE with Licensed Psychologist, [REDACTED] M.A. During the IPE, the evaluating psychologist diagnosed the Appellant with Autism Spectrum Disorder, Level 2 and Global Development Delay along with the medical conditions Hydrocephalus, Congenital Heart Disease, Tracheostomy Dependence, and G-Tube Dependence. During the evaluation, a Developmental Assessment of Young Children (DAYC-2) was issued to the Appellant, in which he achieved a total score of 63, which was classified as very poor. Additionally, a Childhood Autism Rating Scale-CARS2 was completed with the Appellant in which he achieved a total score of 31.0. The evaluating psychologist notes in the IPE "[Appellant] obtained a total score of 31.0 which places him in the severity group of Mild to Moderate symptoms of an Autism Spectrum Disorder". The evaluating psychologist additionally notes, that "[Appellant] scored within the Very Poor range (63) on the DAYC-2; however, due to his age it is unclear if this is accurate." Kerri Linton, consulting psychologist with the Bureau of Medical Services, testified that the Appellant's diagnosed medical conditions including Hydrocephalus, Congenital Heart Disease, Tracheostomy and G-Tube Dependence are not

considered related conditions of severe and chronic conditions which result in impairments in cognitive and adaptive behavior for approval to the I/DD program. Ms. Linton testified that the Appellant's diagnosis of Autism Spectrum Disorder can be considered a potential related condition for program eligibility based on its severity. Ms. Linton purported that severity ratings of Autism Spectrum Disorder are considered at a Level 3 or higher and that the Appellant's diagnosis of a Level 2 failed to meet the severity ratings for program approval. Ms. Linton testified that the Appellant's diagnosis of Global Developmental Delay does not meet diagnostic criteria because the diagnosis is not an intellectual disability.

██████████, the Appellant's mother, testified that she believed her son's condition is chronic and that he requires 24-hour, seven-day-a-week, care for his condition. ██████████ indicated that her son requires multiple caregivers to provide care. ██████████ purported that herself and her family members are trained in providing care for her son and without such care, her son would be placed in a nursing facility.

Based on a review of evidence, the Appellant failed to meet the diagnostic criteria outlined by governing policy. During the IPE, the Appellant's diagnosis of Autism Spectrum Disorder, Level 2 and Global Developmental Delay, failed to meet the program guidelines of an Intellectual Disability or a related condition which is considered severe or chronic in nature. Because the Appellant failed to meet the diagnostic criteria, the Respondent's decision to deny the Appellant's application for I/DD Waiver services is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that an individual must meet the medical eligibility criteria of a diagnosis of an Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, which does not meet the severity criteria.
- 3) The Appellant failed to meet the diagnostic criteria threshold for services under the I/DD Waiver program.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's application for services under the I/DD Waiver program.

**ENTERED this \_\_\_\_\_ day of September 2024.**

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Eric L. Phillips  
**State Hearing Officer**