



September 11, 2024

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDohS  
ACTION NO.: 24-BOR-2519

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-2519**

**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 August 15, 2024, upon a timely appeal filed on June 18, 2024.

The matter before the Hearing Officer arises from the May 14, 2024 decision by the Respondent to deny participation in the I/DD Waiver Program based on medical eligibility findings.

At the hearing, the Respondent appeared by Charley Bowen. The Appellant appeared pro se. Appearing as witnesses were the Appellant's mother, █ advocate and representative for the Appellant. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual, Chapter 513 (excerpt)
- D-2 Notice of decision, dated May 14, 2024
- D-3 Independent Psychological Evaluation  
Evaluation date April 29, 2024
- D-4 Independent Psychological Evaluation  
Evaluation date November 15, 2023

- D-5 Notice of decision, dated January 4, 2024
- D-6 After Visit Summary, dated April 19, 2019
- D-7 Office Visit (document), dated June 30, 2014
- D-8 Office Visit (document), dated December 27, 2013
- D-9 Independent Psychological Evaluation  
Evaluation date July 27, 2022
- D-10 Notice of decision, dated August 31, 2022
- D-11 Independent Psychological Evaluation  
Evaluation date May 11, 2022
- D-12 Notice of decision, dated June 1, 2022

**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 applied for the Intellectual and Developmental Disabilities (I/DD) Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) Charley Bowen, a licensed psychologist employed by PC&A, reviewed the eligibility determination regarding the Appellant.
- 4) An independent psychological evaluation (IPE) of the Appellant was conducted on November 15, 2023. (Exhibit D-4)

- 5) This evaluation (Exhibit D-4) was included with the Appellant's application for the I/DD Waiver Program.
- 6) The Respondent issued a notice (Exhibit D-5), dated January 4, 2024, denying the Appellant's I/DD Waiver Program application.
- 7) The Appellant requested a second medical evaluation in connection with the I/DD Waiver Program application.
- 8) A second IPE (Exhibit D-3) of the Appellant was conducted on April 29, 2024.
- 9) The Respondent issued a notice (Exhibit D-2), dated May 14, 2024, denying the Appellant's I/DD Waiver Program application including the second medical evaluation.
- 10) The Appellant requested a fair hearing regarding a previous I/DD Waiver Program application denial on September 29, 2022 (Action Number [REDACTED]).
- 11) The Board of Review held a hearing on Action Number [REDACTED] on October 20, 2022.
- 12) The Board of Review issued a decision on Action Number [REDACTED] on November 2, 2022, upholding the Respondent's denial of the Appellant's 2022 I/DD Waiver Program application.
- 13) The November 2, 2022 decision issued to the Appellant included instructions for recourse through the Intermediate Court of Appeals.
- 14) A second review of the evidence previously considered in the Appellant's October 20, 2022 hearing (Exhibits D-6, D-7, D-8, D-9, D-10, D-11, D-12) resulted in no change to its effect on the outcome of this hearing.
- 15) The May 2024 denial notice (Exhibit D-2) provided the basis for denial as, "Documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."
- 16) The January 2024 denial notice (Exhibit D-5) provided the basis for denial as, "Documentation submitted for review does not have an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."
- 17) The April 2024 IPE (Exhibit D-3) diagnosed the Appellant with *Autism Spectrum Disorder, with Accompanying Intellectual Impairment, Level I, and Borderline Intellectual Functioning*.
- 18) The Appellant was assessed using the Gilliam Autism Rating Scale – 3 (GARS-3) during the April 2024 IPE and the results included an Autism Index of 100, a "very likely" noted Probability of ASD (Autism Spectrum Disorder), and a Severity Level of 2.

- 19) Neither a Level 1 nor a Level 2 *Autism Spectrum Disorder* diagnosis meets the criteria for a “Related Condition which is severe.”
- 20) The diagnoses offered in the April 2024 IPE (Exhibit D-3) of the Appellant were not eligible diagnoses for I/DD Waiver Program medical eligibility.
- 21) The November 2023 (Exhibit D-4) IPE of the Appellant listed the Appellant’s diagnoses as *Autism Spectrum Disorder, Level 2, Requiring Substantial Support*, and *Specific Learning Disorder in Mathematics*.
- 22) The November 2023 IPE of the Appellant also utilized the GARS-3, resulting in an Autism Index of 97, a “very likely” noted Probability of ASD, and a Severity Level of 2.
- 23) The November 2023 IPE of the Appellant did not list eligible diagnoses for I/DD Waiver Program medical eligibility.

### **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 §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.”

### **DISCUSSION**

The Appellant requested a hearing to appeal the decision of the Respondent to deny her application for I/DD Waiver Services based on unfavorable medical eligibility findings. The Respondent must show, by a preponderance of the evidence, that it correctly denied the Appellant’s application on this basis.

Applicants for the I/DD Waiver Program submit applications with medical documentation including an independent psychological evaluation (IPE). The Respondent contracts with PC&A to determine medical eligibility. Charley Bowen, a licensed psychologist with PC&A, reviewed the Appellant’s medical documentation and provided expert testimony in the hearing.

To be determined medically eligible, an applicant must meet criteria in four separate components. Because all components are required, once an applicant has not met the criteria in one component, further review is not necessary. The Appellant’s applications for the I/DD Waiver Program lacked the diagnostic component, and therefore, review of the remaining components was not addressed by the Respondent or at the hearing.

The Appellant did not have a diagnosis of Intellectual Disability. An Autism Spectrum Disorder (ASD) diagnosis is a potentially eligible diagnosis, depending on severity. The GARS-3 testing instrument is used to measure the likelihood of, and severity of ASD. The GARS-3 produces results at three levels, with Level 3 being the most severe. Expert testimony from Mr. Bowen established that not only is Level 3 the most severe, but it is also the only level meeting the policy requirement for “...related condition which constitutes a severe and chronic disability...”

Although the Appellant’s 2022 denial of the I/DD Waiver Program was addressed in a prior hearing held by the Board of Review (██████████), all medical documentation provided by the Appellant was considered by the Respondent in its denial determinations. This information (Exhibits D-6, D-7, D-8, D-9, D-10, D-11, D-12) was reconsidered for the hearing, but with no change to weight, probative value, or its effect on the ultimate decision outcome. The November 2, 2022 decision to the Appellant from Board of Review Action Number ██████████ noted, in pertinent part:

...  
The Appellant was diagnosed with Autism Spectrum Disorder, which is a potentially eligible diagnosis, if severe. Such diagnoses must meet the most severe designation, or Level 3, and the Appellant did not obtain a Level 3 diagnosis. The Appellant obtained a GARS-3 test result indicating Level 3 severity, but the assessing psychologist only offered a Level 2 diagnosis. The change in test results from May 2022 to July 2022 also result in lower weight given to the July 2022 results because no explanation was offered for the dramatic change in scores provided by the Appellant’s mother. Ultimately, the Appellant needed to have a diagnosis indicating a Level 3 severity of Autism Spectrum Disorder and did not.  
...

Based on the reliable information and testimony provided at the hearing, the Respondent showed that it correctly denied the Appellant’s I/DD Waiver Program application. The Appellant did not meet the diagnostic component of medical eligibility, and therefore did not meet the medical eligibility requirements as a whole.

### **CONCLUSIONS OF LAW**

- 1) Because an ASD diagnosis must be at Level 3 to be a “severe” related condition, the Appellant’s Level 2 diagnosis is not an eligible diagnosis for I/DD Waiver Program purposes.
- 2) Because the Appellant did not have an eligible diagnosis, she did not meet the diagnostic component of medical eligibility.

- 3) Because I/DD Waiver Program policy requires the diagnostic component to meet medical eligibility requirements, the Appellant did not establish medical eligibility for the I/DD Waiver Program.
- 4) Because the Appellant did not meet medical eligibility for the I/DD Waiver Program, 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 participation in the I/DD Waiver Program based on medical eligibility findings.

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

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**Todd Thornton  
State Hearing Officer**