



September 10, 2024



RE: [REDACTED] a Protected Individual, v. WVDoHS
ACTION NO.: 24-BOR-2869

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-2869

**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 September 4, 2024.

The matter before the Hearing Officer arises from the Respondent's denial of benefits under the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program as outlined in a notice dated July 11, 2024.

At the hearing, the Respondent appeared by Kerri Linton, Licensed Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant was represented by ■ Adult Protective Service Worker, WVDoHS. Appearing as witnesses for the Appellant were ■, Child Protective Service Worker, WVDoHS, and ■ Case Manager, ■. 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 July 11, 2024
- D-3 Independent Psychological Evaluation (IPE) dated July 1, 2024
- D-4 ■ Admission Summary dated November 6, 2017
- D-5 ■ Discharge Summary dated November 28, 2017
- D-6 Complete Evaluation/Psychiatric Evaluation dated January 3, 2018
- D-7 ■ Discharge Summary dated May 2, 2019

- D-8 [REDACTED] Conference Attendance and Interdisciplinary Progress Note dated April 22, 2019
- D-9 [REDACTED] Follow Up Record
- D-10 [REDACTED] Psychological Evaluation dated February 6, 2024
- D-11 WV CANS Scoring Assessment dated March 7, 2024
- D-12 WV CANS Scoring Assessment dated April 11, 2024
- D-13 Individualized Education Program (meeting date February 8, 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, who is currently 17 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 July 11, 2024, indicating that his I/DD Waiver application was denied (Exhibit D-2).
- 3) The July 11, 2024, notice states that the Appellant's I/DD Waiver Medicaid application was denied because "documentation submitted for review is inconsistent with a potential eligible diagnosis of Intellectual Disability. Furthermore, the documentation submitted for review does not indicate the need for an ICF level of care." (Exhibit D-2).
- 4) The Appellant underwent an Independent Psychological Evaluation (IPE) on July 1, 2024 (Exhibit D-3).
- 5) The Appellant has diagnoses of Mild Intellectual Disability, Attention Deficit/Hyperactivity Disorder (AD/HD), Child Psychological Abuse, Child Neglect, and Child Physical Abuse, confirmed seizure disorder (Exhibit D-3).
- 6) The Appellant conceded that the Appellant exhibits substantial functional deficits in the major life areas of *Self-Direction* and *Capacity for Independent Living*.
- 7) The Appellant can perform most self-care tasks, but sometimes requires verbal prompts (functional area of *Self-Care*). He received a scaled score of 5 in self-care on the Adaptive Behavior Assessment System, Third Edition (ABAS-3) during the IPE. Scaled scores of 1 and 2 on the ABAS-3 are considered program-eligible scores for the I/DD Waiver Program (Exhibit D-3).

- 8) The Appellant can communicate his wants and needs verbally without assistive devices (functional area of *Receptive or Expressive Language*). He received a scaled score of 4 in communication on the ABAS-3 (Exhibit D-3).
- 9) The Appellant ambulates independently without the use of mechanical aids (functional area of *Mobility*) (Exhibit D-3).
- 10) The Appellant received the following scores on the Wide Range Achievement Test- Fifth Edition (WRAT-5) administered during the IPE (functional area of *Learning*): word reading- 77; spelling- 66; math computation- 55; sentence comprehension- 71; and reading composite- 72. Scores of 55 and below are considered as program-eligible scores for the I/DD Waiver Program (Exhibit D-3).
- 11) The Appellant received a full-scale IQ score of 61 on the Weschler Adult Intelligence Scale- Fourth Edition (WAIS-IV) administered during the July 2024 IPE (Exhibit D-3).
- 12) The Appellant had diagnoses of Disruptive Mood Dysregulation Disorder, AD/HD, Combined Type, Seizure Disorder, and history of Enuresis upon his admission to [REDACTED] in 2017 at age 11 (Exhibit D-4).
- 13) The Appellant had diagnoses of Major Depressive Disorder, Generalized Anxiety Disorder, AD/HD, Oppositional Defiant Disorder, and Mild Intellectual Disability upon his discharge from [REDACTED] in 2017 (Exhibit D-5).
- 14) The Appellant had diagnoses of Major Depressive Disorder, Anxiety Disorder, AD/HD, and Oppositional Defiant Disorder on a Psychiatric Evaluation completed at [REDACTED] in 2018 (Exhibits D-6 and D-7).
- 15) The Appellant has difficulty concentrating and is easily distracted (Exhibit D-6).
- 16) [REDACTED] Records from 2011 and 2015 list one of the Appellant's diagnoses as Autism. However, there is no documentation to support the Autism diagnosis (Exhibit D-9).
- 17) The Appellant achieved the following scores on the Kaufman Brief Intelligence Test- 2 (K-BIT-2) during a Psychological Evaluation completed by [REDACTED] in February 2024: Verbal- 66, Nonverbal- 78; and K-BIT IQ Composite- 68. His IQ score falls within the range of Mild Intellectual Disability to Borderline Intellectual Functioning (Exhibit D-10).
- 18) The Appellant's diagnoses on the [REDACTED] Psychological Evaluation were Persistent Depressive Disorder, Pure Dysthymic Syndrome, Attention Deficit Disorder, Child Physical Abuse, Child Psychological Abuse, and Borderline Intellectual Functioning (Exhibit D-10).

- 19) The Appellant is a victim of child abuse and is currently enrolled in ninth grade after being out of the school environment for several years (Exhibits D-11 and D-12).
- 20) The Appellant is currently enrolled at [REDACTED] High School. He has a short attention span, has difficulty working independently, has difficulty expressing his thoughts on paper, has difficulty with memory tasks, and displays immature behaviors (Exhibit D-13).
- 21) The Appellant participates in a general school environment 36 percent of the time and in a special education environment 64 percent of the time (Exhibit D-13).

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 75th 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.

Kerri Linton, Consulting Psychologist for the Respondent, testified that the Appellant is medically ineligible for I/DD Waiver services because he does not have a consistent diagnosis of intellectual disability and does not meet functionality criteria in three major life areas. Ms. Linton surmised that the Appellant's AD/HD could have played a role in his performance during IQ testing.

██████████, Child Protective Service Worker with the WVDoHS, testified that the Appellant has been a victim in multiple abuse and neglect cases and was locked in a room and starved by his abusers. He has not responded well to learning independent living skills during his placement at the ██████████. The Appellant performs at the first and second grade levels at school. He has attempted to learn work skills at a grocery store and mechanic shop but does not have the capacity to perform simple tasks. ██████████ testified that she does not believe the Appellant received accurate diagnoses in the past because his abusers were providing the information to his doctors.

██████████, Case Manager at the ██████████, testified that the Appellant has struggled since arriving at the center and argues with staff about showering and getting ready for school. She stated that the Appellant also struggles with school staff and recently fought with a peer. He only wants to eat candy, struggles with preparing simple meals, and has difficulty with money budgeting skills.

The Appellant's representative, Adult Protective Service Worker ██████████ testified that the Appellant did not reside at the ██████████ at the time of his recent psychological evaluation so individuals currently involved in his care could likely provide more information about his status.

While it is clear that the Appellant has many challenges related to his condition, he does not have a diagnosis of intellectual disability, or a condition found to be closely related to intellectual disability. 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 Appellant does not meet diagnostic criteria for the I/DD Waiver Program.
- 3) The Appellant does not meet functionality criteria for the I/DD Waiver Program.

- 4) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet medical 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 10th day of September 2024.

**Pamela L. Hinzman
State Hearing Officer**