



October 1, 2024

[REDACTED]

Re: [REDACTED] A PROTECTED INDIVIDUAL v WV DoHS BMS
ACTION NO.: 24-BOR-2515

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Stacy Broce, Bureau of Medical Services
Kerri Linton, PC&A

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

██████████ **A PROTECTED INDIVIDUAL,**

Appellant,

v.

Action Number: 24-BOR-2515

**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 September 25, 2024.

The matter before the Hearing Officer arises from the June 04, 2024 determination by the Respondent to deny the Appellant's medical eligibility for services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

At the hearing, the Respondent appeared by Kerri Linton, Consulting Psychologist for the Bureau for Medical Services (BMS). The Appellant was represented by his ██████████ ██████████ Both witnesses were sworn and the following documents were admitted into evidence.

** Observing and taking notes for the Respondent was Crystal Dotson, Psychological Consultation & Assessment (PC&A).

Department's Exhibits:

- D-1 Department Evidence Cover Letter; Hearing Checklist; IG-BR-29; and Written Request for Hearing
- D-2 Bureau for Medical Services (BMS) Manual § 513.6- 513.6.4
- D-3 DoHS BMS Notice, dated June 04, 2024
- D-4 Independent Psychological Evaluation (IPE), dated April 19, 2024
- D-5 Individualized Education Program Snapshot
- D-6 ██████████ Schools ██████████ IEP, dated May 03, 2022

D-7 Request for Reconsideration, dated April 07, 2024
D-8 [REDACTED] IEP, dated August 26, 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) On an unknown date, an application was made on behalf of the Appellant for services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.
- 2) The Respondent, through the Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDDW Program, including eligibility determinations. (Exhibit D-3)
- 3) On April 19, 2024, [REDACTED] MA, a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-4)
- 4) The April 19, 2024, IPE lists diagnoses of Attention Deficit Hyperactivity Disorder, Unspecified, and Mild Intellectual Disability. (Exhibit D-4)
- 5) A diagnosis of Mild Intellectual Disability does not meet the diagnostic criteria for IDDW Program eligibility. (Exhibits D-2 and D-3)
- 6) In response to documentation submitted by the Appellant's [REDACTED], the Respondent conceded the Appellant had met the eligible diagnosis component of medical eligibility for the IDDW Program. (Exhibit D-3)
- 7) The documentation submitted established a substantial delay in the major life area of *self-care*, due to the Appellant's difficulty managing his medical condition (diabetes). (Exhibits D-3 through D-8)
- 8) On June 04, 2024, the Respondent issued a notice advising the Appellant that his application for IDDW Program eligibility was denied because the submitted documentation did not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas. (Exhibit D-3)
- 9) The June 04, 2024, notice reflected that the Appellant was found to lack substantial adaptive deficits in the areas of *Learning, Self-direction, Receptive/Expressive Language, Mobility, and Capacity for Independent Living*. (Exhibit D-3)

10) The Respondent's June 04, 2024, determination was based on the review of "4/19/24 IPE, IEP Snapshot (Undated); 5/3/22 [REDACTED] Schools IEP; 4/7/24 Request for Consideration-Disability; 8/26/22 [REDACTED] IEP." (Exhibit D-3)

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 513.6 provides, in part:

In order for an applicant to be found eligible for the IDDW Program, they must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through 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.

BMS Manual § 513.6.2 provides, in part:

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 intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for treatment; and
- Requirement of ICF/IID Level of Care

BMS Manual § 513.6.2.1 provides, in part:

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 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 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.

BMS Manual § 513.6.2.2 provides, in part:

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 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.

Code of Federal Regulations 42 CFR § 435.1010(a)(2)-(6) provides, in part:

Persons with related conditions means individuals who have a severe, chronic disability that meets all the following conditions:

- Attributable to any other conditions, 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 like that of mentally retarded persons, and requires treatment or services like those required for these persons,
- Manifested before the person reaches age 22,
- Is likely to continue indefinitely,
- Results in substantial functional limitations in three or more of the following areas of major life activity:
 - Self-care
 - Understanding and use of language
 - Learning
 - Mobility
 - Self-direction
 - Capacity for independent living

DISCUSSION

Pursuant to policy, in order for an applicant to be found eligible for the IDDW Program, an individual must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN). Criteria in each of the following categories must be met in order to be eligible for the IDDW Program: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care. The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested prior to age twenty-two (22) or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age twenty-two (22).

Once an eligible diagnosis is established, the Respondent then evaluates to see if the Appellant meets the functional criteria for the IDDW Program. An adaptive behavior assessment is then used to identify if the Appellant exhibits substantial adaptive deficits in the six (6) major life areas

(*self-care, communication, learning, mobility, self-direction, and capacity for independent living*). Policy defines substantial adaptive deficits as standardized scores of three (3) standard deviations below the mean, or less than one percentile (1%), when derived from a standardized measure of adaptive behavior. The applicant must also 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. A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living is required. Failure to meet any one of the eligibility categories results in a denial of program services.

Keri Linton (Ms. Linton), the consulting psychologist for the Respondent, testified that the Appellant was awarded a substantial adaptive deficit in the area of *self-care*. Because the Appellant was found to lack adaptive deficits in the areas of *learning (functional academics), mobility, self-direction, capacity for independent living* (which includes the following six sub-domains: *home living, social skills, employment, health and safety, community, and leisure activities*), and *receptive or expressive language (communication)*, on June 04, 2024, the Appellant's application for the IDDW Program was denied.

To demonstrate a substantial deficit in the area of *communication*, the evidence had to demonstrate that the Appellant was non-verbal, unable to express wants and needs, or require the usage of augmented communication devices or sign language. The Appellant's April 2024 IPE reflects that while the Appellant's speech does appear to be delayed, he is able to be understood and has the ability to express his wants and needs. In the area of *mobility*, the Respondent explained that in order to meet the threshold of a substantial deficit, an individual would normally be wheelchair-dependent, unable to self-propel, or unable to transfer. Because the evidence demonstrated that the Appellant is independently ambulatory, a substantial deficit in the area of *mobility* could not be awarded. To demonstrate a substantial deficit in the area of *self-direction*, the evidence had to demonstrate that the Appellant was not able to make choices or self-regulate. The Appellant's IPE reflects that the Appellant is capable of initiating and choosing to participate in activities, as the IPE lists some of his favorite things to do, and therefore, a deficit could not be awarded.

Ms. Linton testified that an Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV) was administered. The scores revealed that the Appellant has a full-scale Intelligence Quotient (IQ) of 65, which is consistent with that of Mild Intellectual Disability. The IPE reflects that while the Appellant's attention and concentration were poor during testing, the results were considered valid. In the area of *learning (functional academics)*, the Respondent testified that a Wide Range Achievement Test, Fifth Edition (WRAT-5) was administered. The mean, or average, of this test is 100, with three (3) standard deviations below the mean, resulting in an eligible score of 55 or below. The Appellant scored a total of 68 in *reading*, a 67 in *spelling*, and a 58 in *arithmetic*. Because the Appellant's overall WRAT-5 scores did not meet the policy threshold with scores of 55 or below, the criteria for an additional deficit to be awarded in the area of *functional academics* was not met.

An ABAS-3 was administered to evaluate the Appellant's adaptive functioning level. The Appellant must have a standardized score of one (1) or two (2) to establish a substantial deficit in the six (6) major life areas. In addition to the standardized scores, the narrative descriptions in the IPE must also support the existence of substantial deficits. In the area of *communication*, though the Appellant's scaled score was two (2); it was inconsistent with the narrative descriptions

throughout the submitted documentation, therefore an additional deficit could not be awarded. To demonstrate a substantial deficit in the area of *capacity for independent living*, the Appellant would have to be awarded deficits in at least three (3) of the following six (6) sub-domains: *home/school living*, *social skills*, *employment*, *health and safety*, *community*, and *leisure*. When reviewing the Appellant's ABAS-3 scores, the Appellant received a seven (7) in the area of *community use*. In the area of *home living*, the Appellant's ABAS-3 score reflected a scaled score of one (1). In the area of *health and safety*, the Appellant's ABAS-3 score reflected a scaled score of four (4). In the area of *leisure*, the Appellant's ABAS-3 score reflected a scaled score of three (3). In the area of *functional academics*, the Appellant's ABAS-3 score reflected a scaled score of three (3). And in the area of *social*, the Appellant's ABAS-3 score reflected a scaled score of six (6). Because the Appellant did not meet the three required deficits in the sub-domain of *capacity for independent living*, the criteria for an additional deficit to be awarded was not met.

Testimony was provided by the Appellant's Representative, [REDACTED] in support of the Appellant's need for IDDW Program services. The Appellant's Representative did not refute the Department's testimony, but she did testify that the Appellant does demonstrate alarming behavior due to the violence the Appellant speaks of and fears for others' safety. [REDACTED] further testified that even though the Appellant is currently receiving benefits provided by the Children with Serious Emotional Disabilities Waiver program, the IDDW Program would be a more appropriate level of care to meet the Appellant's needs as it is a life-long program. The Appellant's Representative reasoned that she's concerned about the Appellant's ability to care for himself "if something happens to me [REDACTED]" since the Appellant was abused by his mother and stepfather and will be "on his own." While the Appellant's Representative provided relevant information regarding the Appellant's challenges, the Respondent's decision to deny IDDW Program benefits is affirmed.

CONCLUSIONS OF LAW

- 1) Policy for the IDDW Program requires an applicant to meet medical eligibility criteria in each of the following categories: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care.
- 2) The Appellant has an eligible diagnosis of Intellectual Disability.
- 3) To be eligible for the Medicaid IDDW Program, the Appellant must have an eligible diagnosis and concurrent substantial deficits in at least three of the six identified major life areas that require an ICF level of care.
- 4) Substantial deficits are evidenced by standardized adaptive behavior test scores three (3) standard deviations below the mean, or less than 1% when derived from a normative sample that represents the general population and must be supported by the narrative descriptions contained in the documentation submitted for review.
- 5) The Appellant did not have substantial adaptive deficits in at least three (3) of the six (6) major life areas as evidenced by standardized adaptive behavior test scores and the narrative descriptions contained within the evidence.

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 IDD Waiver Program.

ENTERED this _____ day of October 2024.

**Angela D. Signore
State Hearing Officer**