



October 24, 2024

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDohS  
ACTION NO.: 24-BOR-3015

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 West Virginia 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,

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-3015**

**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 originally convened on September 25, 2024, and was later reconvened on October 23, 2024.

The matter before the Hearing Officer arises from the July 22, 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 Charley Bowen, psychological consultant for the Bureau of Medical Services. The Appellant appeared by his mother and representative, ■ 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 July 22, 2024
- D-3 Independent Psychological Evaluation dated June 25, 2024

**Appellant's Exhibits:**

- A-1 Independent Psychological Evaluation dated May 4, 2024
- A-2 Evaluation Reports from ■ Schools

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 June 25, 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, Requiring Substantial Support with Language Deficits.
- 5) On July 22, 2024, the Respondent issued a Notice of Decision (Exhibit D-2) informing the Appellant's mother that the I/DD Waiver program application had been denied because the 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 June 25, 2024, the Appellant and his mother completed an IPE with [REDACTED] Licensed Psychologist. As part of the IPE, the Appellant was administered the DP-4, as a measure of intellectual and cognitive behavior. The results of such testing documented delayed cognitive behavior. Additionally, the Appellant was administered GARS-3 Autism Screening, in which the Appellant attained a total score of 93 which supported an Autism Rating of Level 2, Requiring Substantial Supports for Autism Spectrum Disorder (ASD). Based on the IPE, the evaluating psychologist diagnosed the Appellant with Autism Spectrum Disorder, Level 2, Requiring Substantial Support with Language Deficits. Charley Bowen, the Department's witness, testified that medical eligibility for the program could not be established because the Appellant failed to meet the diagnostic criteria because he did not present a diagnosis of an Intellectual Disability or a severe related condition. Specifically, the Appellant's diagnosis of Autism Spectrum Disorder, Level 2, a potential related condition under the program, was not measured as severe. To meet the definition of severe, the ASD diagnosis must be rated at a Level 3 or higher.

The Appellant's mother contends her child meets the diagnostic criteria due to his ASD diagnosis. The Appellant's mother confirmed her son's diagnosis of ASD, Level 2. The Appellant's mother believes that additional testing including evaluation of school information, should have been considered in making a medical eligibility termination. The Appellant's mother indicated that her

child is non-verbal and provided testimony concerning her child's difficulties in an educational setting. The Appellant's mother provided a subsequent IPE, dated May 4, 2024, from [REDACTED], and evaluating psychologist [REDACTED]. As part of this IPE, the Appellant was administered a Childhood Autism Rating Scale 2 (CARS-2) in which the Appellant achieved a total score of 36.0, which indicated a severity group of mild to moderate symptoms of ASD. The evaluating psychologist diagnosed the Appellant with Autism Spectrum Disorder, Level 2 and Global Developmental Delay.

Based on a review of evidence, the Appellant failed to meet the diagnostic criteria outlined in governing policy. The Appellant's diagnosis of Autism Spectrum Disorder, Level 2, 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 October 2024.**

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Eric L. Phillips  
**State Hearing Officer**