



October 9, 2024



RE: ██████████ a Protected Individual, v. WVDoHS  
ACTION NO.: 24-BOR-3037

Dear ██████████

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-3037**

**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 October 2, 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 June 26, 2024.

At the hearing, the Respondent appeared by Charley Bowen, Licensed Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant was present and was represented by ■

Therapist, ■ 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 June 26, 2024
- D-3 Independent Psychological Evaluation (IPE) dated June 13, 2024
- D-4 Forensic Psychological Evaluation dated February 29, 2024
- D-5 Psychological Assessment dated November 7, 2019
- D-6 Notice of Decision dated November 22, 2019
- D-7 Individualized Education Program, ■ Schools, dated January 10, 2019
- D-8 ■ Schools Present Levels of Academic Achievement and Functional Performance

D-9 [REDACTED] Updated Treatment Plan dated July 18, 2019, Part 1  
D-10 [REDACTED] Updated Treatment Plan dated July 18, 2019, Part 2

**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 18 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 June 26, 2024, indicating that his I/DD Waiver application was denied (Exhibit D-2).
- 3) The June 26, 2024, notice states that the Appellant's I/DD Waiver Medicaid application was denied because "Documentation submitted for review does not consistently diagnose a potential eligible diagnosis of Autism Spectrum Disorder, Level 3. In addition, documentation submitted for review does not indicate the need for an ICF Level of Care" (Exhibit D-2).
- 4) The notice also states that documentation does not support the presence of substantial adaptive deficits in any of the six major life areas identified for Waiver eligibility (Exhibit D-2).
- 5) The Appellant underwent an Independent Psychological Evaluation (IPE) on June 13, 2024 (Exhibit D-3).
- 6) The IPE lists diagnoses of Autism Spectrum Disorder, Level 3, Borderline Intellectual Functioning, and a personal history of abuse and neglect in childhood (Exhibit D-3).
- 7) The Appellant can dress and undress independently, although he sometimes requires assistance with his jacket. He requires verbal prompting for bathing, and toilets independently. The Appellant can brush his hair and teeth independently, although he may require verbal prompts. The Appellant can use a fork and spoon independently and heat items in a microwave oven (functional area of *Self-Care*) (Exhibit D-3).
- 8) The Appellant can communicate, making his wants and needs known without the use of assistive devices (functional area of *Receptive or Expressive Language*) (Exhibit D-3).
- 9) The Appellant ambulates independently without the use of mechanical aids (functional area of *Mobility*) (Exhibit D-3).

- 10) The Appellant has difficulty making simple choices, becomes anxious, and does better when he has less options. He enjoys Pokemon and Yu-Gi-Oh cards, Legos, and action figures. He hoards items in his room and his level of perseverance depends on his preference for an activity (functional area of *Self-Direction*) (Exhibit D-3).
- 11) The Appellant does household chores and is learning to do laundry. He requires supervision with sorting clothing. The Appellant appears to relate better to younger peers and has been picked on by same-age peers. He would be unaware of who to call if he had no food or money but would know to call the electric company should he have no power. The Appellant cannot care for his own health care needs, is unable to take medication on his own, and could not care for minor injuries. The Appellant is aware of some safety issues but may be at risk from predators in the community. He has no employment skills or vocational training (functional area of *Capacity for Independent Living*) (Exhibit D-3).
- 12) The Appellant attained a full-scale IQ score of 77 (borderline level of intellectual functioning) on the Weschler Adult Intelligence Scale- Fourth Edition (WAIS-IV). The Respondent considers IQ scores of 69 and below as program-eligible scores for the I/DD Waiver Program (functional area of *Learning*) (Exhibit D-3).
- 13) The Appellant's scores on the Adaptive Behavior Assessment System- Third Edition (ABAS-3) ranged from 6 to 10 in the areas of communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction, and social. ABAS scores of 1 and 2 are considered to be program-eligible scores for the I/DD Waiver Program (Exhibit D-3).
- 14) The Appellant's scores on the Wide Range Achievement Test- Fifth Edition (WRAT-5) were: word reading- 81; spelling- 74; math computation- 55; sentence comprehension- 72; and reading composite- 75. The Respondent considers scores of 55 and below as program-eligible scores for the I/DD Waiver Program.
- 15) The Appellant received a score of 106 on the Gilliam Autism Rating Scale-Third Edition (GARS-3). The evaluator indicated that the probability of Autism Spectrum Disorder was "very likely" with a severity level of 3 (Exhibit D-3).
- 16) The Appellant attained a verbal IQ score of 85, a nonverbal IQ score of 97, and an IQ composite score of 90 on the Kaufman Brief Intelligence Test- 2<sup>nd</sup> Edition on a Forensic Psychological Evaluation completed on February 29, 2024. All of the scores were more than 70 and did not qualify as I/DD Program-eligible scores (Exhibit D-4).
- 17) The Appellant received no program-eligible scores on the WRAT-5 administered during the February 2024 psychological evaluation (Exhibit D-4).
- 18) The Appellant received a provisional diagnosis of Unspecified Neurodevelopmental Disorder with Accompanying Intellectual Impairment on the February 2024 evaluation (Exhibit D-4).

- 19) The Appellant attained a full-scale IQ score of 73 on a Wechsler Intelligence Scale for Children- Fifth Edition (WISC-V) during a Psychological Assessment completed on November 7, 2019, placing him in the borderline range of intelligence (Exhibit D-5).
- 20) The Appellant's presentation during the November 2019 assessment was consistent with Autism Spectrum Disorder, but no level was specified by the evaluator (Exhibit D-5).
- 21) An Individualized Education Program (IEP) completed on January 10, 2019, by [REDACTED] Schools indicates that the Appellant received specialized services based on a learning disability, which is an ineligible diagnosis for the I/DD Waiver Program (Exhibit D-7).
- 22) A Master Treatment Plan from the [REDACTED] lists the Appellant's diagnoses as Posttraumatic Stress Disorder, Attention Deficit/Hyperactivity Disorder, Autism Spectrum Disorder (no level specified), Borderline Intellectual Functioning, and Specific Learning Disorder with Reading Impairment (Exhibit D-9).

### **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 75<sup>th</sup> 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 Medicaid 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.

Charley Bowen, Licensed Psychologist with PC&A, testified that while Level 3 Autism was diagnosed on the Appellant's June 2024 IPE, it has not been consistently diagnosed among evaluators and many of the Appellant's reported abilities are inconsistent with the Level 3 diagnosis. In addition, the Respondent could not identify any substantial adaptive deficits for the Appellant.

██████████ Therapist with ██████████ testified that the Appellant participated in a normal class setting at the facility, but all of the students at the school have behavioral issues and the school is set up to address their needs. ██████████ stated that she is concerned about the Appellant's ability to live independently with no assistance or guidance to manage money and stay safe. ██████████ testified that the Appellant performs stimming behaviors when he becomes anxious. ██████████ Case Manager with ██████████, testified that the Appellant requires prompting to complete certain activities and he believes that he can do things that he has never done. While the Appellant communicates well, ██████████ stated that she worries about what will happen to him when he leaves the facility.

While it is clear that the Appellant has many challenges, he does not have a consistent diagnosis of Level 3 Autism, or a condition found to be closely related to intellectual disability that meets severity requirements. In addition, the Appellant does not meet functionality criteria. 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 have a consistent program-eligible diagnosis.
- 3) The Appellant lacks the deficits in substantial life areas required to meet functionality criteria.

- 4) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet program 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 9th day of October 2024.**

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**Pamela L. Hinzman  
State Hearing Officer**