



October 17, 2024

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDohS
ACTION NO.: 24-BOR-3081

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-3081

**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 October 10, 2024, upon a timely appeal filed on August 28, 2024.

The matter before the Hearing Officer arises from the July 9, 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 Charlie Bowen. The Appellant appeared pro se. Appearing as witnesses were the Appellant's mother and father, ■ 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 July 9, 2024
- D-3 Independent Psychological Evaluation
Evaluation date May 24, 2024
- D-4 Goals document (undated)
- D-5 ■ Report, dated April 3, 2024

D-6 [REDACTED] Report, dated May 11, 2023

Appellant's Exhibit:

A-1 Letter from [REDACTED]
Letter from [REDACTED]
Email from [REDACTED] to Janice Brown, dated August 28, 2024

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) Charlie 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 May 24, 2024. (Exhibit D-3)
- 5) The Respondent issued a notice (Exhibit D-2), dated July 9, 2024, denying the Appellant's I/DD Waiver Program application.
- 6) This notice (Exhibit D-2) provided the basis for denial as, "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility."
- 7) The notice (Exhibit D-2) further detailed that the Appellant did not meet the deficit criteria in any of the six major life areas referenced.
- 8) The Appellant was assessed using the Adaptive Behavior Assessment System (ABAS-III) during the May 2024 evaluation (Exhibit D-3) to measure his adaptive behavior.

- 9) The ABAS-III is a testing instrument producing a mean of ten, a standard deviation of three (3), and eligible scores – for the purpose of identifying deficits in major life areas – of one (1) or two (2).
- 10) The Appellant did not obtain any eligible scores on the ABAS-III.
- 11) Additional medical documentation (Exhibits D-4, D-5, and D-6) reviewed by the Respondent in conjunction with the Appellant’s I/DD application did not include measures of adaptive behavior.
- 12) The Appellant’s [REDACTED] prepared a letter (Exhibit A-1) describing the Appellant’s behaviors in class and advocating for the Appellant to have a one-on-one aide in the classroom.
- 13) The Appellant’s [REDACTED], additionally wrote a letter (Exhibit A-1) describing the Appellant’s behaviors in class.

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 §513.6.2.2, this policy addresses functionality, and reads, “The applicant must have substantial deficits in at least three of the six identified major life areas...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.”

DISCUSSION

The Appellant requested a hearing to appeal the decision of the Respondent to deny his 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. Charlie 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. The Appellant's application for the I/DD Waiver Program lacked the functionality component. Functionality is determined in the six major life areas identified by policy by evaluating narrative descriptions of adaptive behavior and measures of adaptive behavior such as the ABAS-III test. The Appellant was administered the ABAS-III during a May 2024 psychological evaluation and did not obtain results indicating substantial adaptive deficits in any of the test's skill areas or corresponding major life areas.

Letters (Exhibit A-1) were provided from the Appellant's school, describing his behaviors in class. While the letters provide additional narrative to describe the Appellant's functionality, they do not include any measures of adaptive behavior. The Appellant's mother noted a testing instrument on the [REDACTED] Report (Exhibit D-5), the Preschool Language Scale – Fifth Edition (PLS-5). The Appellant was administered this test, and the results were included in the [REDACTED] April 2024 (Exhibit D-5) report. The Appellant obtained a PLS-5 score in Expressive Communication with the 'percentile' noted as '1'. It is unclear if this testing instrument utilizes the normative sample required by policy, what the mean and standard deviation are for determining eligible standard score ranges, or if the percentile column refers to a result at the first percentile or 'less than one percentile' as required by policy. Although it is more convincing that the Appellant's PLS-5 results do not indicate a substantial adaptive deficit in the major life area of Receptive or expressive language, it also does not affect the final outcome of the functionality component determination with no other deficits and three (3) of six (6) required by policy.

Based on the reliable testimony and evidence presented at the hearing, the Appellant did not meet the functionality requirements for medical eligibility for I/DD. Each component is required for medical eligibility as a whole. The Appellant, therefore, did not meet medical eligibility for the I/DD Waiver Program and the Respondent's decision to deny the Appellant's application is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not have narrative descriptions and testing results indicating substantial adaptive deficits in at least three (3) of the six (6) major life areas identified by I/DD Waiver policy, the Appellant did not meet the functionality component of medical eligibility for I/DD.

- 2) Because I/DD policy requires each component, including functionality, for medical eligibility as a whole, the Appellant did not meet the medical eligibility requirements for the I/DD Waiver Program.
- 3) 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 October 2024.

**Todd Thornton
State Hearing Officer**