



October 29, 2024

[REDACTED]

RE: [REDACTED] A JUVENILE v. DoHS/BUREAU FOR MEDICAL SERVICES  
ACTION NO.: 24-BOR-3109

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 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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: Bureau for Medical Services  
PC&A  
Acentra

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

█ A JUVENILE,

**Appellant,**

v.

**Action Number: 24-BOR-3109**

**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 juvenile. 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 9, 2024, on an appeal filed on September 3, 2024.

The matter before the Hearing Officer arises from the June 7, 2024, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her parents, █. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Policy Manual §513.6
- D-2 Notice of Denial dated June 7, 2024
- D-3 Independent Psychological Evaluation dated May 8, 2024
- D-4 Independent Psychological Evaluation dated January 12, 2024
- D-5 Notice of Denial dated January 22, 2024
- D-6 Individualized Education Plan dated December 18, 2023
- D-7 Student Profile Report dated December 21, 2023
- D-8 █ Report dated March 11, March 21, and April 1, 2022
- D-9 █ Evaluation dated September 27, 2023
- D-10 Adaptive Behavior Assessment System, Teacher Form dated January 17, 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 applied for services under the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant in conjunction with the I/DD Waiver application on January 12, 2024 (Exhibit D-4).
- 3) The Appellant has eligible diagnoses of mild Intellectual Disability and seizure disorder (Exhibit D-4).
- 4) Substantial adaptive deficits in self-care and learning were identified as a result of the January 2024 IPE (Exhibits D-4 and D-5).
- 5) On January 22, 2024, the Respondent issued a notice to the Appellant advising that the I/DD Waiver application had been denied as the documentation submitted did not support the presence of substantial adaptive deficits in at least three of the major life areas (Exhibit D-5).
- 6) The Appellant underwent a second IPE on May 8, 2024 (Exhibit D-3).
- 7) Substantial adaptive deficits in self-care and learning were identified as a result of the May 2024 IPE (Exhibits D-2 and D-3).
- 8) On June 7, 2024, the Respondent issued a notice to the Appellant advising that the I/DD Waiver application had been denied as the documentation submitted did not support the presence of substantial adaptive deficits in at least three of the major life areas (Exhibit D-2).

### **APPLICABLE POLICY**

**Code of Federal Regulations 42 CFR § 440.150(a)(2) *Intermediate Care Facility (ICF/IID) services*** provided that *ICF/IID services* means health or rehabilitative services furnished to persons with Intellectual Disability or persons with related conditions in an intermediate care facility for individuals with Intellectual Disabilities.

**Code of Federal Regulations 42 CFR § 435.1010 *Definitions relating to institutional status* provides in relevant sections:**

*Active Treatment in intermediate care facilities for individuals with intellectual disabilities* means treatment that meets the requirements specified in the standard concerning active treatment for intermediate care facilities for persons with Intellectual Disability under § 483.440(a) of this subchapter.

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

- (a) It is attributable to –
  - (1) Cerebral palsy or epilepsy; or
  - (2) Any other condition, other than mental illness, found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.
- (b) It is manifested before the person reaches age 22.
- (c) It is likely to continue indefinitely.

**Code of Federal Regulations 42 CFR § 456.70(b) *Medical, psychological, and social evaluations*:**

A psychological evaluation, not older than three months, is required to establish eligibility for Medicaid ICF/IID admission or authorization of payment. The psychological evaluation is required to include a diagnosis; summary of present medical, social, and developmental findings; medical and social family history; mental and physical functional capacity; prognoses; types of services needed; an assessment of the Appellant's home, family, and community resources; and a recommendation for ICF admission.

**Code of Federal Regulations 42 CFR § 456.372 *Medicaid agency review of need for admission*:**

The Medicaid agency or its designee must evaluate each applicant's need for admission by reviewing and assessing the evaluations required by § 456.370.

**Bureau for Medical Services Provider Manual Chapter 513 explains medical eligibility for the I/DD Waiver program:**

**513.6.2 Initial Medical Eligibility**

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 MECA determines the qualification for an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has 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. For the IDDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order 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.

#### **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, 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.

### **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.

### **513.6.2.3 Active Treatment**

Documentation must support 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**

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Respondent denied the Appellant's application as she failed to meet the functionality criteria of three substantial adaptive deficits out of the six major life areas. Two substantial adaptive deficits were identified for the Appellant, *self-care* and *learning*, from the January 2024 and May 2024 IPEs.

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. 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.

Kerri Linton, witness for the Respondent, conceded that the Appellant met the diagnostic criteria for I/DD Waiver eligibility with diagnoses of mild Intellectual Disability and a seizure disorder. However, Ms. Linton testified the functionality criteria for the Appellant was not established. Ms. Linton stated that eligible scores that measure three standard deviations below the mean, or less than one percentile, for the Adaptive Behavior Assessment System (ABAS) are scores of one or two. Ms. Linton noted that the Appellant received eligible scores in the areas of *self-care* and *learning* from the ABAS that was administered to the Appellant during the January 12 and May 8, 2024 IPEs. Ms. Linton testified that to receive a deficit in *capacity for independent living*, at least three eligible scores must be obtained out of the six subcomponents that comprise the major life area. The Appellant did not have eligible scores in any of the subcomponents of *capacity for independent living* on the May 2024 IPE and only received two eligible scores (*health and safety* and *home living*) stemming from the January 2024 IPE.

The Appellant's parents provided testimony regarding the Appellant's need for constant supervision due to her seizure disorder. ██████████ testified that the Appellant has multiple seizures daily, with no aura or warning, which have resulted in broken bones when falling from the onset of the seizure. ██████████ stated the Appellant is unaware of safety concerns, makes poor choices and requires assistance with all her daily activities. ██████████ stated the Appellant attends school part-time due to her seizures and cannot attend extracurricular activities without support and supervision from her parents. ██████████ testified that the Appellant's abilities are declining since the onset of seizures and her condition will not improve.

The Board of Review cannot judge policy and can only determine if the Respondent followed policy when deciding the Appellant's I/DD Waiver program eligibility. Furthermore, the Board of Review cannot draw clinical conclusions regarding the Appellant's functional abilities and severity beyond what is identified by the Independent Psychological Evaluations and corroborated by the submitted information. The Hearing Officer can only decide whether the Respondent correctly denied the Appellant's eligibility based on the measure of her adaptive behavior as indicated on the Independent Psychological Evaluations and corroborated by the submitted information.

Whereas the documentation submitted failed to demonstrate the presence of at least three substantial adaptive deficits out of the six major life areas, the functionality criteria for the I/DD Waiver Program was not established.

## CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.
- 2) The Appellant met the diagnostic criteria of a mild Intellectual Disability and a seizure disorder.
- 3) Substantial adaptive deficits in *self-care* and *learning* were identified for the Appellant from the January and May 2024 Independent Psychological Evaluations.
- 4) The documentation submitted failed to establish a third substantial adaptive deficit, therefor the functionality criteria was not met.
- 5) The Respondent's decision to deny the Appellant's application for services through the I/DD Waiver Program is affirmed.

## DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

**ENTERED this 29<sup>th</sup> day of October 2024.**

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**Kristi Logan**  
**Certified State Hearing Officer**