



October 17, 2024

[REDACTED]

RE: [REDACTED] a Protected Individual, v. WVDoHS  
ACTION NO.: 24-BOR-3110

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 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  
Sissy Johnson, Acentra

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

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 24-BOR-3110**

**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 9, 2024.

The matter before the Hearing Officer arises from the Respondent's denial of Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program benefits as outlined in a notice dated August 5, 2024.

At the hearing, the Respondent appeared by Kerri Linton, Licensed Psychologist, Project Director and Long-Term Care Clinical Consultant, Psychological Consultation & Assessment (PC&A). The Appellant was represented by his father and mother, ■ 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 August 5, 2024
- D-3 Independent Psychological Evaluation (IPE) dated July 25, 2024
- D-4 Individualized Education Program (IEP), ■ Schools, dated April 20, 2023
- D-5 Progress Report- IEP Goals and Objectives dated April 13, 2023
- D-6 Psychological Assessment dated May 2, 2008
- D-7 Electronic mail transmission dated February 22, 2012
- D-8 Psychoeducational Evaluation dated April 18, 2018
- D-9 Psychoeducational Evaluation dated December 1, 2014, and December 4, 2014

- D-10 [REDACTED] Schools Classroom Teacher Evaluation Report dated December 1, 2014
- D-11 [REDACTED] Board of Education Parent Questionnaire for Gifted Education dated December 3, 2014
- D-12 [REDACTED] Schools Confidential Psychological Evaluation dated May 5, 2011
- D-13 [REDACTED] Board of Education Early Childhood Teacher’s Evaluation Report dated February 10, 2011
- D-14 Classroom Observation Form dated May 19, 2011
- D-15 [REDACTED] medical report dated March 20, 2014

**Appellant’s Exhibits:**

- A-1 Letter from [REDACTED] (undated)
- A-2 Letter from [REDACTED] West Virginia Division of Rehabilitation Services, dated August 23, 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, 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 August 5, 2024, indicating that his I/DD Waiver application was denied (Exhibit D-2).
- 3) The August 5, 2024, notice states that the Appellant’s I/DD Waiver Medicaid application was denied because “Documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe” (Exhibit D-2).
- 4) The Appellant underwent an Independent Psychological Evaluation (IPE) on July 25, 2024 (Exhibit D-3).
- 5) The IPE lists the Appellant’s diagnoses as Autism Spectrum Disorder Level 2 and Borderline Intellectual Functioning (Exhibit D-3).
- 6) The IPE evaluator administered the Gilliam Autism Rating Scale-Third Edition (GARS-3) during the July 2024 evaluation and found that the probability of Autism Spectrum Disorder was very likely with a severity level of 2 (Exhibit D-3).
- 7) The Appellant completes most self-care activities independently or with prompting (Exhibit D-3).

- 8) The Appellant can communicate his wants and needs verbally without the use of assistive devices (Exhibit D-3).
- 9) The Appellant ambulates independently without the use of mechanical aids (Exhibit D-3).
- 10) The Appellant can make simple choices if given verbal options (Exhibit D-3).
- 11) The Appellant can order from a menu at a restaurant and enjoys playing video games, biking, skiing, and tubing (Exhibit D-3).
- 12) The Appellant has poor perseverance when faced with a difficult task and gives up easily (Exhibit D-3).
- 13) The Appellant is unable to use community resources independently (Exhibit D-3).
- 14) The Appellant is unaware of safety issues and could likely be taken advantage of by predators in the community (Exhibit D-3).
- 15) The Appellant does not normally report when he is sick or in pain (Exhibit D-3).
- 16) The Appellant does not have any employment history but is working through the West Virginia Division of Rehabilitation Services and will participate in a supportive environment work activity soon (Exhibit D-3).
- 17) The Appellant graduated from high school where he was mainstreamed with modifications (Exhibit D-3).
- 18) The Appellant loves maps and construction and is interested in city planning (Exhibit D-3).
- 19) The Appellant attained a full-scale IQ score of 76 on the Weschler Adult Intelligence Scale-Fourth Edition, which falls in the borderline range of intellectual functioning (Exhibit D-3).
- 20) The Appellant received the following scores on the Wide Range Achievement Test – Fifth Edition (WRAT-5): word reading- 81; spelling- 89; math computation- 94; sentence comprehension- 87; and reading composite- 82. The Respondent considers scores of 55 and below as program-eligible scores for the I/DD Waiver Program (Exhibit D-3).
- 21) While in high school, the Appellant spent 83 percent of his time in a general education environment and 17 percent in a special education environment (Exhibit D-4).
- 22) The Appellant underwent a Psychological Assessment in 2008 at age 2 and scored 33 on the Childhood Autism Rating Scale (CARS), indicating that he falls in the mild to moderate range of autistic spectrum disorders (Exhibit D-6).
- 23) The Appellant underwent a Psychoeducational Evaluation through [REDACTED] Schools at age 12 and was receiving special education services based on autism. He was

administered the Woodcock Johnson Tests of Achievement- Fourth Edition and received subtest scores in the average to low average range. He received scores in the very low range in reading and writing samples and the extremely low range in passage comprehension (Exhibit D-8).

- 24) The Appellant underwent a Psychological Evaluation through ██████████ Schools at age 9 and attained a full-scale IQ score of 77 on the Weschler Nonverbal Scale of Ability, which indicates cognitive ability in the upper part of the borderline range. In addition, he received an IQ composite score of 77 on the Kaufman Brief Intelligence Test- Second Edition, which is also in the borderline range of intellectual ability. His scores on the Woodcock Johnson Tests of Achievement fell in the average to low average range (Exhibit D-9).
- 25) The Appellant underwent a Psychological Evaluation through ██████████ Schools at age 5 and received a full-scale IQ score of 55, which was in the mentally impaired range (Exhibit D-12).
- 26) The Respondent requires a diagnosis of Autism Spectrum Disorder Level 3 in order to meet severity requirements for the I/DD Waiver Program.

### **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 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.

Kerri Linton, Licensed Psychologist and Long-Term Care Clinical Consultant with PC&A, testified that the Respondent's diagnosed level of Autism Spectrum Disorder (Level 2) does not meet requirements for the I/DD Waiver Program. She stated that an individual must have a diagnosis of Level 3 Autism to meet severity requirements. While the Appellant's IQ score on a psychological evaluation at age 5 indicated that he had a mental impairment, his IQ scores have improved since that time and his current scores fall within the borderline range of intellectual functioning.

The Appellant's parents contended that the Appellant has significant delays in functioning and will be unable to live independently. He does not understand danger and requires assistance with self-care and other areas of functionality. The Appellant had a modified curriculum while in school and is currently working with [REDACTED] to try and help him find employment. The Appellant's father pointed out that there is no information in policy that specifies that an individual must have Level 3 Autism to qualify for the I/DD Waiver Program.

Ms. Linton explained that Autism Spectrum Disorder Level 3 is most often associated with concurrent cognitive and adaptive impairment and is the threshold for meeting criteria as an eligible related condition for the I/DD Program.

While it is clear that the Appellant has many challenges related to his condition, he does not have a diagnosis of intellectual disability, or a condition found to be closely related to intellectual disability that meets severity requirements. 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 Respondent's diagnosis of Autism Spectrum Disorder Level 2 does not meet diagnostic criteria for the I/DD Waiver Program.
- 3) The Respondent's decision to deny I/DD Waiver Medicaid benefits based on failure to meet diagnostic 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 17th day of October 2024.**

---

**Pamela L. Hinzman  
State Hearing Officer**