



October 17, 2024



RE:  A PROTECTED INDIVIDUAL v. WVD_oHS
ACTION NO.: 24-BOR-3168

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 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-3168

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,**

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, on appeal dated September 9, 2024.

The matter before the Hearing Officer arises from the July 19, 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 Kerri Linton, consulting psychologist for the Bureau of Medical Services. The Appellant appeared by her mother, ■. Appearing as a witness was ■

■ 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 19, 2024
- D-3 Independent Psychological Evaluation dated July 15, 2024
- D-4 Individualized Education Program (IEP)- ■ Schools dated February 21, 2024
- D-5 IEP Consideration For Students Who Are Deaf Or Hard of Hearing dated February 19, 2024
- D-6 Plan of Care- ■ Schools dated February 21, 2021
- D-7 Notice of Eligibility Committee and/or Individualized Education Program Team Meeting dated February 2, 2024

- D-8 Audiologic Report- [REDACTED] dated September 29, 2022
- D-9 Psychological Evaluation dated November 10, 2022
- D-10 [REDACTED] Evaluation
- D-11 [REDACTED] Evaluation
- D-12 [REDACTED] Evaluation

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 is an eight-year-old child.
- 2) The Appellant, through her mother, applied for benefits and services through the Respondent’s Intellectual/Developmental Disabilities Waiver (I/DD) services program.
- 3) On July 15, 2024, an Independent Psychological Evaluation (IPE) (Exhibit D-3), a requirement of the application process, was completed with the Appellant and her mother.
- 4) The Appellant was diagnosed on the IPE with Autism Spectrum Disorder (ASD) (Level 1), Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder and Borderline Intellectual Functioning.
- 5) On July 19, 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 75th 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 July 11, 2024, the Appellant and her mother completed an IPE with Licensed Psychologist, [REDACTED] M.A. As part of the IPE, the Appellant was administered the Weschler Intelligence Schale for Children (WISC-V). The Appellant achieved a Full-Scale Intellectual Quotient score of 68 which was classified as extremely low. Additionally, the Appellant was administered a Childhood Autism Rating Scale (CARS2) in which she achieved a total score of 33.5, in the severity group of mild to moderate symptoms of an ASD. The attending psychologist based her diagnosis of the Appellant from all information derived from the observations and administered tests during the IPE and determined a diagnosis for the Appellant of ASD, Level 1,

Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder and Borderline Intellectual Functioning. Kerri Linton, the Department's witness, testified that medical eligibility for the program could not be established because the Appellant failed to meet the diagnostic criteria. Specifically, Ms. Linton purported that the Appellant was not diagnosed with an Intellectual Disability and the Appellant's diagnosis of Autism Spectrum Disorder, Level 1, a potential related condition under the program guidelines, was not measured as severe. Ms. Linton indicated that to meet the definition of severe, the ASD diagnosis must be rated at a Level 3 or higher.

The Appellant's representative testified that the Appellant completed additional testing on August 29, 2024, which demonstrated a regression in educational functioning. For purposes of this hearing, the additional educational evaluations were not available for consideration in the Department's determination of the Appellant's initial medical eligibility. Because the new medical information was not examined in the determination of medical eligibility, the State Hearing Officer gives the new educational information no weight in the determination of the July 19, 2024.

The Appellant's representative testified that the Appellant is now experiencing mobility issues and is currently awaiting further testing. The Appellant's representative testified that the Appellant experiences difficulties in daily activities and requires assistance to aid in participation of those activities.

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 1, 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 1, 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.

Eric L. Phillips
State Hearing Officer