



October 29, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS/BMS
ACTION NO.: 24-BOR-3169

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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED] on behalf of the Appellant
[REDACTED] on behalf of the Appellant
Stacy Broce, Bureau for Medical Services
Kerri Linton, Psychological Consultation and Assessment
Janice Brown, Acentra

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

████████████████████

Appellant,

v.

Action Number: 24-BOR-3169

**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 ██████████. 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 16, 2024.

The matter before the Hearing Officer arises from the Respondent's August 22, 2024 decision to deny the Appellant medical eligibility for the Medicaid Intellectual/ Developmental Disabilities Waiver Program.

At the hearing, the Respondent was represented by Charley Bowen, Psychological Consultation and Assessment (PC&A). Crystal Dotson, PC&A, observed on the Respondent's behalf and did not provide testimony. The Appellant appeared and was represented by her mother, ██████████

██████████ appeared as witnesses on the Appellant's behalf. All representatives and witnesses were placed under oath and the following documents were admitted into the evidence.

Department's Exhibits:

D-1 Bureau for Medical Services (BMS) Manual excerpts

D-2 Denial Notice
Dated August 22, 2024

D-3 Premier Psychological Solutions Independent Psychological Evaluation (IPE)
Dated July 31, 2024

Signed by [REDACTED] Licensed Psychologist PLLC

- D-4 [REDACTED] Individualized Education Program (IEP)
Dated, September 1, 1995
- D-5 Letter, dated August 27, 1995
- D-6 Psychological Evaluation
Dated August 13, 2002
Completed by [REDACTED] Psychological Services
- D-7 Psychological Evaluation
Dated July 17, 2001
Signed by [REDACTED] licensed psychologist
- D-8 **
- D-9 [REDACTED] IEP, dated August 20, 1996
- D-10 Annual Medical Evaluation, dated October 2004

Appellant's Exhibits:

- A-1 Clinical Progress Report, dated June 7, 1982
[REDACTED] guardianship record
Completed on November 8, 1985
Social History, dated October 23, 2004
- A-2 Vocational Evaluation Report
Dated October 218, 1993
Completed by [REDACTED] Vocational Evaluator
- A-3 [REDACTED] Schools IEP
Dated March 2 and April 14, 1994
- A-4 Remedial Math record
Dated February 13, 1995
Completed by [REDACTED]
- A-5 Language Arts 9 record
Completed by [REDACTED]
- A-6 Work Evaluation Report
Entry Date: December 5, 1995
Completed by [REDACTED] Vocational Evaluator

- A-7 IEP, dated 1996
[REDACTED] IEP
Dated August 20, 1996
- A-8 Work Evaluation Report
Evaluation date: November 4, 1997
Completed by [REDACTED] Work Evaluator
- A-9 [REDACTED] IEP
Dated June 12, 1997
- A-10 Psychological Evaluation
Dated February 16, 1998
Completed by [REDACTED] licensed psychologist

Joint Exhibit:

- J-1 Psychological Evaluation
Dated February 20, 1995
Completed by [REDACTED] school psychologist

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.

**Exhibit D-8 re-labeled as J-1

FINDINGS OF FACT

- 1) On August 22, 2024, the Respondent issued a notice advising the Appellant's medical eligibility for the Medicaid I/DD Waiver program had been denied because the submitted documentation did not indicate an eligible diagnosis with concurrent adaptive deficits during the developmental period (before age 22) (Exhibit D-2).
- 2) The Appellant was diagnosed Legally blind – [REDACTED] (Exhibit A-1).

During the Developmental Period

- 3) In 1995, the Appellant received 80% of her education in a special education setting and 20% of her education in a regular education setting due to visual impairment (VI) (Exhibit D-4).
- 4) In 1996, the Appellant received 2,250 minutes of special education per week (Exhibit D-9).

- 5) On February 20, 1995, school psychologist [REDACTED] completed a psychological evaluation with the Appellant (Exhibit J-1).
- 6) At the time of the evaluation, the Appellant was 18 years old (Exhibit J-1).
- 7) On February 16, 1998, [REDACTED] completed another psychological evaluation with the Appellant -(Exhibit A-10)
- 8) [REDACTED] considered information provided by [REDACTED] and the Appellant's father (Exhibits J-1 and A-10).
- 9) [REDACTED] administered a revised verbal WAIS, [REDACTED] – Interview Edition, and Diagnostic Interview (Exhibits J-1 and A-10).
- 10) [REDACTED] reviewed the Appellant's medical file, and previous psychological evaluation (Exhibits J-1 and A-10).
- 11) [REDACTED] evaluation narrative reflected the Appellant's functioning was within the "borderline range of intellectual functioning" (Exhibits J-1 and A-10).
- 12) The record of [REDACTED] evaluations did not include a diagnosis (Exhibits J-1 and A-10).

After the Developmental Period

- 13) On July 31, 2024, [REDACTED] MA Licensed Psychologist PLLC, conducted an IPE with the Appellant (Exhibit D-3).
- 14) At the time of the July 31, 2024 IPE, the Appellant was 47 years old (Exhibit D-3).
- 15) The Appellant was totally blind during the July 31, 2024 IPE (Exhibit D-3).
- 16) [REDACTED] considered information provided by the Appellant, her [REDACTED] case manager, and her Aged and Disabled Waiver program caretaker, [REDACTED] Exhibit D-3).
- 17) [REDACTED] reviewed previous evaluations, tests, and diagnoses demonstrated in a February 20, 1995 psychological evaluation; September 1995 IPE; August 20, 1996 IEP; July 17, 2001 IPE; and an August 13, 2002 [REDACTED] psychological evaluation and records (Exhibit D-3).
- 18) [REDACTED] administered the Wechsler Adult Intelligence Scale (WAIS-IV) and found the Appellant's verbal comprehension and working memory composite scores to be in the mild range for intellectual deficiencies (Exhibit D-3).

- 19) [REDACTED] administered the Adaptive Behavior Assessment System 3 (ABAS-3) with [REDACTED] (Exhibit D-3).
- 20) [REDACTED] administered the Wide Range Achievement Test, Fifth Edition (WRAT5), verbally with modifications (Exhibit D-3).
- 21) [REDACTED] diagnosed the Appellant with Mild Intellectual Disability based on the records review, current psychological test results, and observations (Exhibit D-3).
- 22) On August 13, 2002, [REDACTED] MS, completed a psychological evaluation with the Appellant (Exhibit D-6).
- 23) When the August 13, 2002 evaluation was completed, the Appellant was 25 years old (Exhibit D-6).
- 24) [REDACTED] reviewed previous evaluations, tests, and diagnoses demonstrated in a July 17, 2001 psychologist evaluation; and an April 7, 2000 psychological evaluation (Exhibit D-6).
- 25) [REDACTED] considered the information reported by [REDACTED] (Exhibit D-6).
- 26) [REDACTED] administered the WAIS-III and an Adaptive Behavior Scale-Residential and Community (ABAS-RC-2) rated by [REDACTED] (Exhibit D-6).
- 27) A diagnosis was not provided in the submitted pages of the August 13, 2002 evaluation (Exhibit D-6).
- 28) On July 17, 2001, [REDACTED], a supervised psychologist, completed a psychological evaluation with the Appellant (Exhibit D-7).
- 29) At the time of the July 17, 2001 evaluation, the Appellant was 24 years old (Exhibit D-7).
- 30) [REDACTED] considered the information reported by [REDACTED] (Exhibit D-7).
- 31) [REDACTED] reviewed previous WRAT 3, WAIS-III, and Stanford-Binet Intelligence Scale: Fourth Edition (SB: FE) assessments administered on April 7, 2000 (Exhibit D-7).
- 32) [REDACTED] administered WAIS-III, WRAT 3, and ABAS-RC:2 (Exhibit D-7).
- 33) [REDACTED] diagnosed the Appellant with Dysthymic Disorder and Borderline Intellectual Functioning (Exhibit D-7).
- 34) [REDACTED] and licensed psychologist [REDACTED] Ph.D., signed the July 17, 2001 evaluation (Exhibit D-7).

35) In 2004, an annual medical evaluation was completed with the Appellant at [REDACTED] (Exhibit D-10).

36) The Appellant was 27 during the 2004 medical evaluation (Exhibit D-10).

37) “Mild mental retardation/ delayed mental development,” was indicated under *Neurological – Other* on the medical evaluation (Exhibit D-10).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 513.6.1.1 *Initial Eligibility Determination Process provides in relevant sections:* The applicant is provided with a list of Independent Psychologists (IP) in the Independent Psychologist Network (IPN) trained by the MECA who are available within the applicant’s geographical area. The applicant chooses a psychologist in the IPN and contacts the IP to schedule the appointment within 14 days.

The IP is responsible for completing an Independent Psychological Evaluation (IPE) that includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is utilized by the MECA to make a medical eligibility determination.

When the MECA denies eligibility, a notice is mailed advising the applicant of the right to a fair hearing or a second medical evaluation. If a second medical evaluation is requested, it must be completed within 60 days by a different member of the IPN at the expense of BMS.

Any applicant denied medical eligibility may re-apply to the Medicaid I/DD Waiver program at any time.

BMS § 513.6 *Applicant Eligibility and Enrollment Process* provides in relevant sections: To be eligible for the Medicaid I/DD Waiver Program, the applicant must meet medical eligibility requirements ...

The applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN); which may include background information, mental status examination, a measure of intelligence, adaptive behavior, achievement and any other documentation deemed appropriate

The Independent Psychologist (IP) is responsible for completing an IPE The evaluation includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior.

The IPE is utilized by the MECA to make a final medical eligibility determination.

BMS Manual § 513.6.2 *Initial Medical Eligibility* provides in relevant sections:

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

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 [Medicaid I/DD Waiver] 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 [Medicaid 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

BMS Manual § 513.6.2.1 *Diagnosis* provides in relevant sections:

The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested before age 22 or a related condition that constitutes a severe and chronic disability with concurrent substantial deficits manifested before age 22.

Examples of related conditions that may, if severe and chronic in nature, make an individual eligible for the IDDW 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 a diagnosis of intellectual disability or a severe related condition with associated concurrent adaptive deficits must also 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 under Section 513.6.2.2 *Functionality*.

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

DISCUSSION

The Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation failed to confirm the presence of an eligible diagnosis established during the developmental period. During the hearing, the Appellant's representative argued that the Appellant requires substantial support and should be found medically eligible for the Medicaid I/DD Waiver Program.

The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicants' eligibility for the Medicaid I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through a review of an Independent Psychological Evaluation (IPE) report. The MECA does not have the authority to change the information submitted for review and can only determine 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 the Appellant's Medicaid I/DD Waiver eligibility. Further, the Board of Review cannot make clinical conclusions regarding the Appellant's diagnosis and severity beyond what is stipulated in the IPE and submitted documentation. The Hearing Officer can only decide whether the Respondent correctly denied the Appellant's eligibility based on the diagnosis and severity verified in the submitted documentation.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that the Appellant was correctly denied eligibility because the submitted documentation failed to meet the medical eligibility criteria for the Medicaid I/DD Waiver Program. To be eligible for the Medicaid I/DD Waiver Program, the Appellant must meet the medical eligibility criteria in each category: *Diagnosis, Functionality, Need for active treatment, and Requirement of an ICF/IID level of care.*

Assessment Reliability

While the Appellant's representative and witnesses argued that the administered assessments do not fully consider the Appellant's intellectual capabilities due to her blindness, the Respondent's representative's testimony established that the administered exams are widely used to measure intelligence for individuals, including those with visual impairment. The evaluation narratives reflected that verbal measures were administered to accommodate the Appellant's visual impairment. Sufficient evidence was not provided to establish that the measures administered, or their results, were unreliable.

Diagnosis

Under the policy, the IPE diagnosis had to be supported by assessments and relevant measures of adaptive behavior. The federal regulations task the agency with evaluating the applicant's need for admission by reviewing and assessing the required evaluations. The policy requires the MECA to

consider the current diagnostic criteria when reviewing submitted documentation for eligibility. The MECA's representative testified that borderline intellectual functioning and Mild Intellectual Disability do not qualify as a severe intellectual disability.

To be eligible for the Medicaid I/DD Waiver, the preponderance of the evidence had to demonstrate the presence of an intellectual disability or a related severe and chronic disability attributable to a condition, other than mental illness, that resulted in an impairment of the Appellant's general intellectual functioning or adaptive behavior. The condition had to be likely to continue indefinitely, manifest before age 22, and result in substantial functional limitations in three or more areas of major life activity. To prove that the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver Program, the preponderance of evidence had to demonstrate that the Appellant did not have a diagnosis of an intellectual disability or a related condition that constituted a severe and chronic disability with concurrent substantial deficits manifested before age 22.

During the hearing, the Appellant's representative and witnesses testified to the substantial support required to ensure the Appellant's safety and well-being. The evidence revealed that the Appellant received special education services during the developmental period. The policy requires documentation to verify the presence of an eligible diagnosis during the developmental period and requires the diagnosis and severe functioning deficits to be affirmed by a current IPE conducted by a qualifying provider. As the evidence revealed the submitted IPE was reliable, the Board of Review must consider the IPE diagnosis when determining the Appellant's eligibility for the Medicaid I/DD Waiver program. Because the preponderance of the evidence did not reveal a diagnosis of severe intellectual disability present during the Appellant's developmental period and corroborated by the current IPE, the Appellant's eligibility for the Medicaid I/DD Waiver program cannot be affirmed.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant must meet the medical eligibility criteria in each category: *Diagnosis, Functionality, Need for active treatment, and Requirement of an ICF/IID level of care.*
- 2) The Respondent proved by a preponderance of evidence that the submitted documentation did not verify the presence of an eligible diagnosis manifested during the Appellant's developmental period.
- 3) Because the policy requires medical eligibility to be established in each category and the submitted evidence failed to establish the presence of a qualifying diagnosis, the Respondent correctly denied the Appellant's medical eligibility for the Medicaid I/DD Waiver program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver program.

ENTERED this 29th day of October

Tara B. Thompson, MLS
State Hearing Officer