



November 13, 2024



RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDOHS
ACTION NO.: 24-BOR-3246

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-3246

**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 30, 2024, upon a timely appeal filed on September 19, 2024. The hearing record was kept open until November 6, 2024, to allow the Respondent to review and respond to a late submission of evidence from the Appellant.

The matter before the Hearing Officer arises from the September 11, 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 Kerri Linton. The Appellant appeared pro se. Appearing as a witness was the Appellant's mother, ■. All witnesses were placed under oath 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 September 11, 2024
- D-3 Independent Psychological Evaluation
Evaluation date August 19, 2024

- D-4 Behavioral Medicine Progress Note, dated March 28, 2024
- D-5 Emergency Department Provider Notes/Psychiatric Evaluation
Visit dates: June 30, 2024, and August 7, 2024
- D-6 [REDACTED] Individualized Education Program (IEP)
Meeting Date: January 5, 2024
- D-7 [REDACTED]
[REDACTED] Report, dated June 27, 2022
- D-8 Independent Psychological Evaluation
Evaluation date January 5, 2023
- D-9 Notice of decision, dated February 20, 2023
- D-10 Independent Psychological Evaluation
Evaluation date June 7, 2021
- D-11 Eligibility Committee Report/[REDACTED] (date illegible)
- D-12 [REDACTED] IEP
Meeting Date: September 24, 2020
- D-13 Confidential Psychoeducational Evaluation
Report Date: August 9, 2019
- D-14 [REDACTED]
[REDACTED] Evaluation, dated May 3, 2017
- D-15 Neuropsychological Evaluation, dated June 15, 2017
- D-16 Notice of decision, dated July 6, 2021
- D-17 Adaptive Behavior Assessment System, Third Edition (ABAS-3)
Teacher Form
Date: September 3, 2024

Appellant's Exhibits:

- A-1 Letters dated October 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) Kerri Linton, a licensed psychologist employed by PC&A, reviewed the eligibility determination regarding the Appellant.
- 4) The Respondent mailed a denial letter dated September 11, 2024 (Exhibit D-2) to the Appellant.
- 5) In response to prior I/DD Waiver applications, the Respondent issued denial notices dated July 6, 2021 (Exhibit D-16) and February 20, 2023 (Exhibit D-9).
- 6) The 2024 notice (Exhibit D-2) provided the basis for the denial as, “Documentation is inconsistent with respect to potential eligible diagnoses of either Intellectual Disability or a [*sic*] Autism Spectrum Disorder. Policy requires eligible diagnoses to be chronic and likely to continue indefinitely.”
- 7) The 2023 notice (Exhibit D-9) provided the basis for the denial as, “Documentation submitted for review does not support the presence of the degree of intellectual disability typically associated with the need for an ICF/IID level of care.”
- 8) The 2021 notice (Exhibit D-16) provided the basis for the denial as, “Documentation submitted for review does not support the presence of an eligible diagnosis of intellectual disability or a related condition which is severe.”
- 9) The Appellant underwent psychological evaluations or testing resulting in diagnoses on May 3, 2017 (Exhibit D-14), June 15, 2017 (Exhibit D-15), June 7, 2021 (Exhibit D-10), June 27, 2022 (Exhibit D-7), January 5, 2023 (Exhibit D-8), and August 19, 2024 (Exhibit D-3).
- 10) In May 2017 (Exhibit D-14), the Appellant was diagnosed with Autism Spectrum Disorder (level unspecified) and Attention Deficit Hyperactivity Disorder, which is not an eligible diagnosis.

- 11) Autism Spectrum Disorder (ASD) is a potentially eligible diagnosis, depending on its severity.
- 12) For an ASD diagnosis to be severe, it must be at Level 3.
- 13) In June 2017 (Exhibit D-15), the evaluating psychologist noted regarding the Appellant (emphasis added), "...his presentation is most consistent with dual diagnoses of attention deficit/hyperactivity disorder and a **mild autism spectrum disorder (level 1)**..."
- 14) In June 2021 (Exhibit D-10), the Appellant was diagnosed with Borderline Intellectual Functioning and Autism, at level 1.
- 15) Borderline Intellectual Functioning is not an eligible diagnosis for the I/DD Waiver Program.
- 16) In June 2022 (Exhibit D-7), the Appellant was diagnosed with Autism Spectrum Disorder (level unspecified) and three ineligible diagnoses.
- 17) In January 2023 (Exhibit D-8), the Appellant was diagnosed with Autism Spectrum Disorder, Level 1, Intellectual Disability – mild, and Attention Deficit/Hyperactive Disorder combined presentation.
- 18) The Appellant did not receive a diagnosis of a mild intellectual disability on any evaluation other than the January 2023 (Exhibit D-8) evaluation.
- 19) The Appellant was tested multiple times using the Gilliam Autism Rating Scale, Third Edition (GARS-3), to evaluate the likelihood and severity of an ASD diagnosis.
- 20) In August 2024 (Exhibit D-3), the Appellant obtained a GARS-3 index result of 122, indicating level 3 ASD.
- 21) In June 2021 (Exhibit D-10), the Appellant obtained a GARS-3 index result of 114, indicating level 3 ASD.
- 22) The evaluating psychologist did not diagnose level 3 ASD in conjunction with the Appellant's GARS-3 result in 2021 (Exhibit D-10).
- 23) The Appellant was tested for autism in 2019 (Exhibit D-13) using the ADOS testing instrument, and the evaluating psychologist noted, "An ADOS done by [REDACTED] did not meet criteria for autism."
- 24) Ms. Linton testified that the ADOS is the "gold standard" or best testing instrument for diagnosing ASD.
- 25) The Appellant was not eligible for Birth to Three services (Exhibit D-3), which require milder delays than the I/DD Waiver Program.

- 26) The Appellant was not receiving services in the school system related to ASD, but for an “other health impairment.” (Exhibits D-6, D-11 and D-11)
- 27) The Appellant was on track to complete a general diploma in the school system (Exhibit D-5) instead of a modified diploma.

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 §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.” Additionally, diagnoses must be “...likely to continue indefinitely...”

DISCUSSION

The Appellant requested a hearing to contest the Respondent’s decision to deny his application for I/DD Waiver services due to medical eligibility findings. The Respondent must show, by a preponderance of the evidence, that it correctly denied the Appellant’s application on this basis.

The I/DD Waiver Program requires medical eligibility in each of the four areas specified in policy. The Appellant was denied for the diagnostic component. Diagnoses of intellectual disability or related conditions must be severe, chronic, and likely to continue.

The Appellant has applied for the I/DD Waiver Program multiple times, and numerous psychological evaluations and tests have been conducted. The Appellant was diagnosed with ASD, a potentially eligible diagnosis, only one time at the severity level (level 3) necessary to meet diagnostic criteria for a related condition. The Appellant was diagnosed with a mild intellectual disability only once. The Appellant’s other diagnoses contradicted these outlier diagnoses.

The Appellant was tested twice using the GARS-3 and obtained results indicative of a level 3 ASD diagnosis. However, one of the evaluating psychologists was not persuaded by the Appellant’s GARS-3 results and only diagnosed the Appellant with ASD, level 1, insufficient for diagnostic requirements. The ADOS, a more reliable test (as established by expert testimony from Ms. Linton), was administered and the Appellant “did not meet criteria for autism.” The Appellant’s

diagnosis of mild intellectual disability would be an eligible diagnosis, but it is contradicted by other diagnoses and testing, specifically by a diagnosis of Borderline Intellectual Functioning in June 2021.

Relevant history notes (Exhibit D-3) showed the Appellant was ineligible for Birth to Three services. This program requires “40% delays” as opposed to “99% delays” in the I/DD Waiver Program, and the Appellant’s past ineligibility for Birth to Three is inconsistent with the need for I/DD Waiver services. The school system noted that the Appellant was not receiving services for ASD, but rather for an “other health impairment” category. The Appellant was on track for completing a general diploma instead of a modified diploma from the school system – also inconsistent with a need for I/DD Waiver services.

The Appellant provided letters from individuals advocating for his need for services (Exhibit A-1). These letters did not provide relevant information not already in the record. The Appellant’s mother did not provide these until the day of the hearing. The exhibit was admitted and Ms. Linton was given time to review the information. Upon review, Ms. Linton reported no change to the Department’s September 2024 decision.

The Appellant obtained two separate diagnoses for the I/DD Waiver program which are unconvincing because of their inconsistency with prior diagnoses, ADOS testing, and services received in the school system. Based on all reliable evidence, the Appellant does not have an eligible diagnosis for the I/DD Waiver Program that is consistent, severe and likely to continue indefinitely. Because this diagnostic component of medical eligibility is unmet, medical eligibility as a whole was not met. The Respondent decision to deny the Appellant’s application for I/DD Waiver services based on medical eligibility findings is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant’s potentially eligible diagnoses are inconsistent with prior diagnoses, testing and services in the school system, they are unreliable.
- 2) Because the Appellant does not have an eligible diagnosis, he has not met medical eligibility requirements for the I/DD Waiver Program.
- 3) Because the Appellant did not meet medical eligibility requirements, the Respondent must deny his application for I/DD Waiver services.

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 November 2024.

**Todd Thornton
State Hearing Officer**