



November 27, 2024

[REDACTED]

RE: [REDACTED] a Protected Individual, v. WVDoHS
ACTION NO.: 24-BOR-3446

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 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: Terry McGee, BMS
Kerri Linton, PC&A

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

██████████ **A PROTECTED INDIVIDUAL,**

Appellant,

v.

Action Number: 24-BOR-3446

**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 November 20, 2024.

The matter before the Hearing Officer arises from the Respondent's denial of benefits under the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) Medicaid Program as outlined in a notice dated July 10, 2024.

At the hearing, the Respondent appeared by Charley Bowen, Licensed Psychologist and Long-Term Care Clinical Consultant, Psychological Consultation & Assessment (PC&A). The Appellant was present and was represented by ██████████ Case Manager, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Policy Chapter 511
- D-2 Notice of Denial dated July 10, 2024
- D-3 ICF/IID Level of Care Evaluation dated April 2, 2024
- D-4 Independent Psychological Evaluation dated May 30, 2024
- D-5 Social History dated January 10, 2024
- D-6 ██████████ dated
March 10, 2016
- D-7 Psychological Evaluation and Testing Report dated January 8, 2008
- D-8 ██████████, assessment date
October 25, 2007

D-9 [REDACTED] Psychological Report, test date April 9, 2003

Appellant's Exhibits:

A-1 [REDACTED] Admission
Assessment dated September 6, 2018

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 26 years old, applied for benefits under the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) Program.
- 2) The Respondent sent the Appellant a Notice of Decision on July 10, 2024, indicating that his ICF/IID Waiver application was denied (Exhibit D-2).
- 3) The July 10, 2024, notice states that the Appellant's ICF/IID Program application was denied based on lack of a program-eligible diagnosis (Exhibit D-2).
- 4) The Appellant underwent an ICF/IID Level of Care Evaluation on April 2, 2024 (Exhibit D-3).
- 5) The diagnostic portion of the ICF/IID Level of Care Evaluation includes psychological and cognitive diagnoses of Major Depressive Disorder, Autism Spectrum Disorder, and intellectual disability. The physician indicated that the Appellant requires an ICF/IID level of care (Exhibit D-3).
- 6) The Appellant underwent an Independent Psychological Evaluation (IPE) on May 30, 2024, at age 25 (Exhibit D-4).
- 7) The Appellant's developmental delays were noted once he started [REDACTED] (Exhibit D-4).
- 8) The Appellant has been living at the [REDACTED] since February 2023 (Exhibit D-4).
- 9) The Appellant occasionally displays aggression and has temper tantrums at the [REDACTED] and has been diagnosed with depression, Intermittent Explosive Disorder, autism and borderline intellectual functioning (Exhibit D-4).
- 10) The Appellant has previously been hospitalized due to behavioral issues (Exhibit D-4).

- 11) The Appellant was oriented to time, date, and name during the Independent Psychological Evaluation and was able to provide the address of his facility. His memory was within normal limits and his judgment skills were mildly deficient (Exhibit D-4).
- 12) The Appellant achieved a full-scale IQ score of 80 (low average range of intellectual ability) on the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) and attained the following sub-scores: verbal comprehension index- 85; Perceptual Reasoning Index- 90; Working Memory Index- 86; and Processing Speed- 74 (Exhibit D-4).
- 13) The Respondent considers scores below 70 as eligible WAIS-IV scores for the ICF/IID Program.
- 14) The Appellant received the following scores on the Wide Range Achievement Test-Fifth Edition (WRAT-5): Word Reading- 113 (above average range); Spelling- 109 (average range); Math Computation- 99 (average range); Sentence Comprehension- 81 (low average range); and Reading Composite- 95 (average range) (Exhibit D-4).
- 15) The Appellant's WRAT-5 scores indicate that the Appellant functions at greater than the 12th-grade level in word reading and spelling, at the 12th-grade level in mathematics; and at the sixth-grade level in reading comprehension (Exhibit D-4).
- 16) The Appellant scored 102 on the Gilliam Autism Rating Scale, Third Edition (GARS-3), and the evaluator diagnosed Autism Spectrum Disorder, Level 3 (Exhibit D-4).
- 17) The Appellant requires 24-hour supervision with activities of daily living, medication management, and "substantial support" (Exhibit D-4).
- 18) The IPE did not include a recommendation for an ICF Level of Care (Exhibit D-4)
- 19) The Appellant graduated from high school with a modified diploma in 2018 (Exhibit D-5).
- 20) A Social History evaluation certified the Appellant's need for an ICF/IID Level of Care (Exhibit D-5).
- 21) The Appellant was enrolled in special education classes for autism while attending [REDACTED] and received speech therapy (Exhibit D-6).
- 22) While in [REDACTED], the Appellant completed his work in a timely manner, typically without prompting, but on some days preferred to draw. He became increasingly verbal in discussing his interests with teachers and eagerly participated in math class. At times, he had difficulty with socialization skills (Exhibit D-6).
- 23) The Appellant spent 57 percent of his time in regular education and 43 percent of his time in a special education environment while in school (Exhibit D-6).

- 24) A Psychological Evaluation completed in 2008 when the Appellant was nine years old indicates that the Appellant had marked impairment in nonverbal behaviors, a lack of peer relationships appropriate to age and developmental level, a rigid regiment of routines and rituals, and repetitive mannerisms, specifically flapping his hands. He had little interest in engaging in social relationships and spoke only when directly asked a question, making little, if any, direct eye contact (Exhibit D-7).
- 25) The Appellant achieved a full-scale IQ score of 88 (low average range) during the 2008 evaluation and had WRAT-IV scores that fell in the above average to average range of intellectual ability except for a low average score in arithmetic (Exhibit D-7).
- 26) The Appellant was diagnosed with Asperger's Disorder on the 2008 Psychological Evaluation (Exhibit D-7).
- 27) An Autism Diagnostic Observation Schedule (ADOS) test was completed for the Appellant during a 2007 evaluation through [REDACTED] as a measure of autism. The Appellant displayed elevated traits of autism in the areas of stereotypical behaviors and social interaction but had mild traits in the area of communication. The evaluator indicated that the Appellant would have needed elevated scores in all three of those areas to be considered for an overall diagnosis of Autism Spectrum Disorder (Exhibit D-8).
- 28) A 2003 Psychological Report from [REDACTED] completed when the Appellant was four years old, showed pre-school IQ scores in the intellectually deficient range and in the average range for academic readiness. The evaluator indicated that the testing may have been an underestimate of the Appellant's intellectual ability due to deficits in communication and socialization skills (Exhibit D-9).
- 29) A 2018 Outpatient Admission report from [REDACTED] completed when the Appellant was 20 years old, states that the Appellant is autistic, but does not include a level of autism (Exhibit A-1).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual Chapter 511 provides eligibility requirements for ICF/IID services:

511.2.2 Eligibility Determination of Members

Individuals must meet both medical and financial eligibility to receive ICF/IID services. Individuals seeking ICF/IID services may have their eligibility determined prior to or after their admission to an ICF/IID facility.

To establish eligibility prior to admission, a complete packet of required information must be submitted no more than 30 days prior to placement in the ICF/IID facility and placement must occur within 90 days of the date of the DD-3.

To establish initial eligibility post admission, a complete packet of required information must be submitted no more than thirty 30 days after placement in the ICF/IID facility. The DD-3 must be current (within 90 days of placement).

All submitted information must be current. The prior eligibility packet of information includes the DD-2A, DD-3, and DD-4 and must be submitted to the BMS or the ICF/IID contracted agent in order to determine eligibility for each applicant for whom payment is requested.

Current is defined as:

- DD-2A (Medical Evaluation) must have been completed within 180 days of the placement date. Additionally, any Medical Evaluation dated prior to 180 days of receipt by BMS or the ICF/IID contracted agent shall be considered out of date.
- DD-3 (Psychological Report) must have been completed within 90 days of the placement date. Additionally, any psychological report dated prior to 90 days of receipt by BMS or the ICF/IID contracted agent shall be considered out of date.
- DD-4 (Social History) must have been completed within 180 days of the placement date. Additionally, any social history dated prior to 180 days of receipt by BMS or the ICF/IID contracted agent shall be considered out of date.

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Upon receipt of a complete packet, an eligibility determination will be made within 30 days and the decision communicated to the applicant and/or guardian, and/or the provider that submitted the packet.

Post-admission eligibility determination requires the provider to submit a DD-1, and a complete DD-5 (IPP) within 30 days after the intake to BMS or the ICF/IID contracted agent. Payment authorization for start and stop dates shall be delayed until the receipt of the DD-1, the DD- 5 (IPP) and the Inventory for Client and Agency Planning (ICAP).

The provider will assume the financial risk of providing services during the period that eligibility is being considered. In the event an individual is determined not to meet ICF/IID eligibility there is no mechanism to reimburse the provider.

511.2.3 Medical Eligibility Criteria

BMS, through the ICF/IID contracted agent, determines the medical eligibility for an applicant in the ICF/IID Program. In order to be eligible for ICF/IID placement, the applicant must meet the following criteria:

1. 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.
 - a. Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for ICF/IID placement 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 persons with an intellectual disability, and requires services similar to those required for persons with an intellectual disability.

b. 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 below.

2. The applicant must have substantial adaptive deficits in three or more of the following six major life areas:

- self-care,
- receptive and/or expressive language, (communication)
- learning, (functional academics)
- mobility,
- self-direction,
- capacity for independent living which includes the following six subdomains:
 - home living
 - social skills
 - employment
 - health and safety
 - community Use
 - leisure activities
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For the capacity for independent living major life area to be met, the applicant must be substantially delayed in at least three of the six sub-domains (home living, social skills, employment, health and safety, community use and leisure activities).

Substantial adaptive 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 by the additional documentation submitted for review (e.g. Individual Education Program (IEP), Occupational therapy (OT) evaluations, narrative descriptions, etc.). Substantial deficits must be documented through both the narrative documents and the standardized measures of adaptive behavior.

3. The applicant must have a need for an ICF/IID level of care that is:
 - Certified by a physician (DD-2A) and,
 - Documented as being required by the licensed psychologist (DD-3) and;
 - Recommended by a licensed social worker (DD-4).
4. The applicant must require and would benefit from active treatment.
 - Evaluations of the applicant must demonstrate a need for intensive instruction, services, assistance, and supervision in order to learn new skills and increase independence in activities of daily living.

DISCUSSION

To meet medical eligibility requirements for the ICF/IID Medicaid Program, an individual must have 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 (3) substantial adaptive deficits out of the six (6) major life areas, the need for an ICF/IID level of care, and a determination that the individual would require and benefit from active treatment.

Charley Bowen, Licensed Psychologist and Long-Term Care Clinical Consultant, represented the Respondent and testified that an Autism Level 3 diagnosis is required to meet criteria for the ICF/IID Program. The Appellant's application was denied because there is no evidence of an Autism Level 3 diagnosis within the developmental period (prior to age 22). The Appellant was diagnosed with Asperger's Syndrome while enrolled in [REDACTED] and did not meet criteria for Autism Spectrum Disorder. While pre-school testing results at the age of four (likely before the Appellant's IQ was crystallized) revealed IQ scores in the intellectually deficient range, those scores are inconsistent with scores from subsequent evaluations in which the Appellant's level of intellectual functioning fell in the low average to average range. Mr. Bowen indicated that narrative information does not support a diagnosis of Autism Level 3, noting that individuals with Level 3 Autism have very limited communicative abilities and often only repeat what others say. The Appellant spent 57 percent of his time in regular education while in school, which is not reflective of an individual with Level 3 Autism.

The Appellant's case worker, [REDACTED], testified that the Appellant currently resides in a 24/7 supervised setting and requires constant reminders to care for his hygiene and complete chores. Following the death of the Appellant's parents and grandfather, the Appellant's aunt was unable to care for both the Appellant and his autistic brother.

While the Appellant clearly 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. Therefore, the Respondent acted correctly in denying the Appellant's ICF/IID application.

CONCLUSIONS OF LAW

- 1) To qualify for ICF/IID Medicaid benefits, an individual must meet diagnostic criteria.

- 2) Diagnostic criteria requires a diagnosis of an intellectual disability or related condition which constitutes a severe and chronic disability that manifested prior to age 22.
- 3) Evidence does not confirm the presence of a severe intellectual disability or related condition that manifested prior to age 22.
- 4) The Respondent's decision to deny the Appellant's ICF/IID application is affirmed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny the Appellant's ICF/IID Medicaid application.

ENTERED this 27th day of November 2024.

**Pamela L. Hinzman
State Hearing Officer**