



November 6, 2024



RE: [REDACTED] v. DoHS/BUREAU FOR MEDICAL SERVICES  
ACTION NO.: 24-BOR-3447

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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services  
PC&A  
Acentra

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

██████████,

**Appellant,**

v.

**Action Number: 24-BOR-3447**

**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 November 6, 2024.

The matter before the Hearing Officer arises from the September 17, 2024, decision by the Respondent to deny medical eligibility for the I/DD Waiver Program.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist with the Bureau for Medical Services. The Appellant appeared and was represented by her mother, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Policy Manual §513.6
- D-2 Notice of Denial dated September 17, 2024
- D-3 Independent Psychological Evaluation dated August 14, 2024
- D-4 Notice of Individualized Education Plan Meeting dated April 11, 2024
- D-5 Individualized Education Plan dated April 23, 2024
- D-6 Regression Recoupment Documentation Form dated April 15, 2024
- D-7 ██████████ Parent Transition Survey dated April 16, 2024
- D-8 ██████████ Student Interest/Preference Survey dated April 16, 2024
- D-9 ONET Interest Profiler Report dated April 22, 2024
- D-10 Individualized Education Plan Progress Report and Student Transcript

- D-11 Personalized Education Plan
- D-12 i-Ready Math Scores dated September 13, 2023
- D-13 Psychoeducational Evaluation Report dated April 14, 2022
- D-14 Independent Psychoeducational Evaluation dated October 21, 2021

**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 applied for services under the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant in conjunction with the I/DD Waiver application on August 14, 2024 (Exhibit D-3).
- 3) The Appellant has an eligible diagnosis of mild Intellectual Disability (Exhibit D-3).
- 4) A substantial adaptive deficit in *capacity for independent living* was identified as a result of the August 2024 IPE (Exhibits D-4 and D-5).
- 5) On September 17, 2024, the Respondent issued a notice to the Appellant advising that her I/DD Waiver application had been denied as the documentation submitted did not support the presence of substantial adaptive deficits in at least three of the six major life areas (Exhibit D-2).

**APPLICABLE POLICY**

**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:***

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:***

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

**Bureau for Medical Services Provider Manual Chapter 513 explains medical eligibility for the I/DD Waiver program:**

**513.6.2 Initial Medical Eligibility**

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. An ICF/IID provides monitoring, supervision, training, and supports. Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

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 IDDW 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 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.

#### **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, 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.

#### **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 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.

### **513.6.2.3 Active Treatment**

Documentation must support 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**

Pursuant to policy, an individual must meet the medical eligibility criteria of 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 substantial adaptive deficits out of the six major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Respondent denied the Appellant's application as she failed to meet the functionality criteria of at least three substantial adaptive deficits out of the six major life areas. One substantial adaptive deficit was identified for the Appellant, *capacity for independent living*, from the August 2024 IPE.

Policy stipulates that 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. 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.

Charley Bowen, witness for the Respondent, conceded that the Appellant met the diagnostic criteria for I/DD Waiver eligibility with a diagnosis of mild Intellectual Disability. However, Mr. Bowen testified the functionality criteria for the Appellant was not established. Mr. Bowen stated that eligible scores that measure three standard deviations below the mean, or average, or less than one percentile, for the Adaptive Behavior Assessment System (ABAS) are scores of one or two. Mr. Bowen noted that the Appellant received eligible scores in the area of *capacity for independent living* from the ABAS that was administered to the Appellant during the August 14, 2024 IPE. The Appellant did not have eligible scores in *learning, self-direction, self-care* or *receptive/expressive language*.

The Appellant was administered the Wide Range Achievement Test (WRAT) to measure her abilities related to *learning*. The mean for the WRAT is a score of 100 and three standard deviations below the mean are eligible scores of 55 and below. The Appellant did not have any scores below 55 as derived from the WRAT, therefore, Mr. Bowen testified that an adaptive deficit in *learning* could not be established.

The Appellant's mother, [REDACTED] testified that the Appellant requires constant step-by-step instructions with her hygiene, dressing and household chores. [REDACTED] stated she has provided the Appellant with prompting in these areas everyday since she was a child, and the Appellant cannot remember to complete these tasks without her instructions. [REDACTED] testified that the Appellant does not have depth perception with her vision, and she does not recognize safety issues. [REDACTED] stated the Appellant can participate in a conversation, but she does not feel the Appellant is able to process what she is being told. [REDACTED] argued that the Appellant cannot live alone and requires assistance when she is working.

The Board of Review cannot judge policy and can only determine if the Respondent followed policy when deciding the Appellant's I/DD Waiver program eligibility. Furthermore, the Board of Review cannot draw clinical conclusions regarding the Appellant's functional abilities and severity beyond what is identified by the Independent Psychological Evaluations and corroborated by the submitted information. The Hearing Officer can only decide whether the Respondent correctly denied the Appellant's eligibility based on the measure of her adaptive behavior as indicated on the Independent Psychological Evaluations and corroborated by the submitted information.

Whereas the documentation submitted failed to demonstrate the presence of at least three substantial adaptive deficits out of the six major life areas, the functionality criteria for the I/DD Waiver Program was not established.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, the functionality criteria of at least three substantial adaptive deficits out of the six major life areas, the need for active treatment

and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

- 2) The Appellant met the diagnostic criteria of a mild Intellectual Disability.
- 3) A substantial adaptive deficit in *capacity for independent living* was identified for the Appellant from the August 2024 Independent Psychological Evaluation.
- 4) The documentation submitted failed to establish two additional substantial adaptive deficits, therefore the functionality criteria was not met.
- 5) The Respondent's decision to deny the Appellant's application for services through the I/DD Waiver Program is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

**ENTERED this 6<sup>th</sup> day of November 2024.**

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**Kristi Logan**  
**Certified State Hearing Officer**