



November 22, 2024

[REDACTED]

RE: [REDACTED] v. DoHS/BUREAU FOR MEDICAL SERVICES
ACTION NO.: 24-BOR-3585

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 Health

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

██████████,

Appellant,

v.

Action Number: 24-BOR-3585

**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 20, 2024.

The matter before the Hearing Officer arises from the September 24, 2024, decision by the Respondent to deny medical eligibility for services through the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by his parents, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial dated September 24, 2024
- D-3 Independent Psychological Evaluation dated September 5, 2024
- D-4 Evaluation Report of Licensed Physician/Psychologist (undated)
- D-5 Developmental-Autism Consultation dated April 18, 2005
- D-6 Developmental Clinic Pediatric Psychological Summary dated April 18, 2005
- D-7 Multidisciplinary Developmental Clinic Team Summary dated April 18, 2005
- D-8 Patient Lab Inquiry dated June 23, 2005
- D-9 Occupational Therapy Evaluation dated April 18, 2005
- D-10 Individualized Education Program dated September 27, 2018

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 through the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on September 5, 2024, in conjunction with the I/DD Waiver application (Exhibit D-3).
- 3) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2 and Generalized Anxiety Disorder (Exhibit D-3).
- 4) The Respondent issued a notice of denial on September 24, 2024, advising the Appellant that his application had been denied as the documentation submitted did not indicate an eligible diagnosis of an Intellectual Disability or related condition which is severe (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 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.

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 he did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. Kerri Linton, witness for the Respondent, testified that the Appellant's diagnosis of Autism Spectrum Disorder Level 2, does not meet the severity criteria for a qualifying related condition for program eligibility. Ms. Linton contended that according to the Diagnostic and Statistical Manual for Mental Disorders (DSM), a rating of a level 3 for Autism Spectrum Disorder is considered severe and would meet severity criteria as a related condition for I/DD Waiver eligibility.

Ms. Linton referenced previous testing for the Appellant from April 2005. The Appellant was administered the Autism Diagnostic Observation Schedule (ADOS) and received a total score of 16, lending the diagnosis of autism in 2005. The Appellant was also administered the Gilliam

Autism Rating Scale (GARS) and received a score of 85, in the below average probability range of autism. The Appellant scored 38 on the Childhood Autism Rating Scale (CARS), which was in the severe range of autism. Ms. Linton testified that the severity of the Appellant's autism diagnosis has been inconsistently measured and his most recent diagnosis of Autism Spectrum Disorder, Level 2 does not meet the severity criteria.

The Appellant received a total Intelligence Quotient (IQ) score of 98 on the Weschler Adult Intelligence Scale (WAIS) during the September 2024 IPE. Ms. Linton testified that a score of 98 is in the average range of intellectual functioning and therefore, a diagnosis of Intellectual Disability was not given. Ms. Linton stated that because the Appellant did not meet the diagnostic criteria for I/DD Waiver eligibility, his functional abilities were not considered.

The Appellant's father, [REDACTED], testified that the Appellant cannot complete areas of self-care without constant prompting and supervision and the Appellant requires daily intervention and assistance. [REDACTED] expressed frustration with the application process, stating he had years of psychological evaluations he could have provided if requested. [REDACTED] stated that the Appellant will test differently each time he is evaluated, and an outsider cannot fully determine his functionality.

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 diagnosis 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 an eligible diagnosis as indicated on the Independent Psychological Evaluations and supported by the submitted information.

Whereas the documentation submitted failed to demonstrate the presence Intellectual Disability, or related a condition that is severe, the criteria for the I/DD Waiver Program was not established

CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the diagnostic criteria of a diagnosis of 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 2, which does not meet the severity criteria in policy.
- 3) The Appellant has not been diagnosed with Intellectual Disability.
- 4) The Appellant does not meet the diagnostic criteria for services under the I/DD Waiver Program.

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 22nd day of November 2024.

Kristi Logan
Certified State Hearing Officer