



January 3, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS/BMS
ACTION NO.: 243-BOR-3600

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: WV DoHS/BMS, PC&A, ACENTRA

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-3600

**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 December 18, 2024.

The matter before the Hearing Officer arises from the October 10, 2024 decision by the Respondent to deny I/DD Waiver program services.

At the hearing, the Respondent appeared by Charley Bowen, consulting psychologist for the Bureau for Medical Services. The Appellant was present but was represented by her mother ██████████. Appearing as a witness for the Appellant was ██████████ Vocational Rehabilitation Specialist with ██████████. 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 §§513 *et. seq.*
- D-2 Denial Notice, dated October 10, 2024
- D-3 Independent Psychological Evaluation, evaluation date September 12, 2024
- D-4 Clinical Summary, ██████████ office visit notes, dated September 19, 2023
- D-5 Outpatient EEG, dated October 3, 2013
- D-6 ██████████ Schools Confidential Psychological Report and Psychological Evaluation Data Results, September 4, September 6, November 2, November 6, November 15, 2007
- D-7 ██████████ Behavior Evaluation Scale, December 9, 2000
- D-8 Parent Rating Scale, November 14, 2007

- D-9 Occupational Therapy Evaluation [REDACTED] Schools, April 9, 2008
- D-10 Individualized Education Program [REDACTED] Schools, September 17, 2007
- D-11 Individualized Education Program Snapshot
- D-12 Individualized Education Program [REDACTED] Schools, November 19, 2019
- D-13 Office of Special Education, Confidential Psychological Report, March 1, 2017
- D-14 [REDACTED] Correspondence dated October 8, 2024

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 the I/DD Waiver program.
- 2) As part of the I/DD Waiver program application process, the Appellant was evaluated in an Independent Psychological Evaluation (IPE) was conducted on September 12, 2024 by licensed psychologist [REDACTED] who diagnosed the Appellant with Autism Spectrum Disorder Level 3 without language impairment, Mild Intellectual Disability, Generalized Anxiety Disorder by History type 1 diabetes, epilepsy by medical history. (Exhibit D-3)
- 3) The Respondent denied the Appellant’s application for the I/DD Waiver program in a Notice of Decision dated October 10, 2024. (Exhibit D-2)
- 4) The October 10, 2024 Notice cited the denial as “Documentation submitted for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe during the developmental period (prior to the age of 22). Policy requires an eligible diagnosis with concurrent adaptive deficits to be present during the developmental period.” (Exhibit D-2)
- 5) During the developmental period, the Appellant had been diagnosed with Autism (without a specified level), epilepsy, and mental health disorders – anxiety, Oppositional Defiant Disorder (ODD), and emotional processing disorder. (Exhibit D-2)
- 6) The Appellant has had inpatient treatment for self-harming and aggressive behaviors. (Exhibit D-2)
- 7) The Appellant has had an Individualized Educational Program (IEP) throughout her schooling with special education classes 4% of her day. (Exhibit D-10)

- 8) In 2007, during her developmental period, IEP testing of the Appellant's adaptive behavior with Adaptive Behavior Evaluation Scale-R2 (ABES-R2) showed a total score of 81 from her mother and a total score of 72 from her teacher with the only eligible score of 1 in the category of Home Living. (Exhibit D-6)
- 9) In her IEP testing in 2007, the Appellant underwent intellectual/cognitive testing through the Wechsler Intelligence Scale for Children – 4th Edition (WISC-IV). (Exhibit D-6)
- 10) WISC-IV eligible test scores that meet diagnostic eligibility are identified by scores of 69 and below. The Appellant had a total score of 72, which showed her cognitive abilities in the low end of borderline/impaired range. (Exhibit D-6)
- 11) The 2007 IEP also tested the Appellant for Autism which showed her to be in the mild to moderate range of Autism. (Exhibit D-6)
- 12) The Appellant graduated high school with a standard diploma. (Exhibit D-11)
- 13) The Appellant has been employed through a work program in a supportive work environment in a nursing home facility and at [REDACTED]

APPLICABLE POLICY

Bureau for Medical Services (BMS) Provider Manual §513.6.2, *Initial Medical Eligibility*: To be medically eligible, the applicant must require a 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 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.

Bureau for Medical Services Provider Manual §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 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 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, Functionality.

Bureau for Medical Services Provider Manual §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.

Bureau for Medical Services Provider Manual §513.6.2.3, *Active Treatment*

Documentation must support that 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

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver program: 1) Diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22; 2) Functionality of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, 3) Active Treatment - the need for active treatment, 4) ICF/IID Level of Care need for services under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services. 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 need the same level of care and services provided in an ICF/IID setting.

The Respondent contracts with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicant eligibility for the I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through review of an Independent Psychological Evaluation (IPE) report. The MECA determines 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 about the Appellant's I/DD Waiver eligibility. The Respondent must show by a preponderance of evidence that it correctly denied the Appellant's I/DD Waiver application.

Charley Bowen, the Respondent's consulting psychologist from PC&A, testified that Autism Spectrum Disorder (ASD) can be considered a related condition under the diagnostic criteria, but the diagnosis must be severe with concurrent substantial deficits prior to the developmental period. Mr. Bowen explained that for program eligibility purposes, ASD meets the severity criteria when it is assessed at a Level 3. Although the September 2024 IPE, diagnosed the Appellant with ASD Level 3, the assessment and diagnosis were made after the developmental period. Previous assessments and diagnoses of ASD made during the developmental period did not indicate or diagnose ASD at a Level 3 or showed she had concurrent adaptive deficits present.

The Appellant's mother, [REDACTED], testified that no other testing was done for the Appellant during the developmental period because she was advised it was not necessary. [REDACTED], who has worked as a job coach with the Appellant stated that she has had two separate employment

opportunities. The first was in a nursing home facility and the most current one was at [REDACTED] testified that the Appellant was able to perform job functions but needed prompts from the individual from [REDACTED] who supported her with the job.

It does appear that the Appellant did have some testing done through the school system, beginning when she was age 7. The 2007 IEP testing showed that the Appellant had borderline intellectual ability and only one qualifying area in adaptive behavior in the area of home living (scored by a teacher). Mr. Bowen noted that the Appellant did graduate from high school with a standard diploma, which is not typical of those individuals who qualify for the I/DD Waiver program.

The information submitted before the MECA failed to demonstrate that the Appellant met the severity level needed to meet the diagnostic criteria for program eligibility during her developmental period. Therefore, the Respondent's denial of the Appellant's I/DD Waiver program application is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not have an eligible diagnosis for the I/DD Waiver program during the developmental period with concurrent adaptive deficits, the diagnostic component of medical eligibility is unmet.
- 2) Because the diagnostic component is not met, the Appellant did not meet medical eligibility for the I/DD Waiver program.
- 3) Because the Appellant did not meet the medical eligibility requirements, the Respondent correctly denied the Appellant's application for the I/DD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's I/DD Waiver Program application.

ENTERED this 3rd day of January 2025.

Lori Woodward, Certified State Hearing Officer