



January 7, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS/BMS  
ACTION NO.: 24-BOR-3601

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-3601**

**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 September 16, 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 September 16, 2024
- D-3 Independent Psychological Evaluation, evaluation date September 12, 2024
- D-4 Confidential Report, March 11, 2008
- D-5 Educational Assessment Report, November 30, 2007
- D-6 Eligibility Report, December 4, 2007
- D-7 ██████████ Schools Summary of Performance Student Transcript, May 11, 2021
- D-8 ██████████ Schools IEP, Senior Evaluation, ██████████ Schools  
Personalized Education Plan, September 7, 2020
- D-9 ██████████ Schools Amendment Review Date May 11, 2021
- D-10 CT Brain and MRI Brain, May 17, 2004

D-11 CT Brain, January 18, 2015  
D-12 Clinical Summary, January 22, 2015

**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) conducted on September 12, 2024 by licensed psychologist [REDACTED] who diagnosed the Appellant with Autism Spectrum Disorder Level 2 without language impairment, Mild Intellectual Disability, ADHD, combined present by history, and epilepsy. (Exhibit D-3)
- 3) The Adaptive Behavior Assessment System, Third Edition (ABAS-3), rated by the Appellant's mother, was administered during the September 2024 IPE. (Exhibit D-3)
- 4) The ABAS-3 produces results scaled to a mean of 10 and a standard deviation of 3, scores of 1 and 2 are deemed to be indicative of a substantial deficit in the area tested.
- 5) The Appellant obtained a qualifying score of 1 in the areas of *Self-Care* and *Community Use, Home Living*, and *Leisure*, which are sub-domains of *Capacity for Independent Living (CIL)* on the ABAS-3. (Exhibits D-3)
- 6) With results on the September 2024 ABAS-3 in other tested areas ranging from 3 to 7, the Appellant did not have scores indicating substantial functional deficits required for program eligibility. (Exhibit D-3)
- 7) On the September 2024 IPE, the Appellant was evaluated with the Wide Range Achievement Test – 5<sup>th</sup> Edition (WRAT-5). (Exhibit D-3)
- 8) The WRAT-5 is a test of academic achievement, or functional academics, with a mean of 100, a standard deviation of 15, and results below 55 indicating substantial delays in functional academics.
- 9) The Appellant obtained WRAT-5 scores ranging from 63 to 68. (Exhibit D-3)
- 10) In 2003, when the Appellant was 5 years old, she underwent a Vineland Adaptive Behavior Scales (Vineland), completed by her parent. (Exhibit D-4)

- 11) The Vineland has a mean of 100 with a standard deviation of 15, and results below 55 indicating substantial delays in adaptive behavior.
- 12) The Appellant achieved scores ranging from 62 to 72 on the Vineland. (Exhibit D-4)
- 13) The narratives and test scores contained in the documentation reviewed did not show that the Appellant had a substantive deficit in communication. (Exhibits D-3, D-4, D-8, D-9)
- 14) The Appellant has had an Individualized Educational Program (IEP) throughout her schooling with special education classes 29% of her day. (Exhibit D-10)
- 15) The Appellant graduated high school in 2021 with a standard diploma. (Exhibit D-8)
- 16) The Appellant has been employed through a work program in a supportive work environment in a nursing home facility and at [REDACTED]
- 17) The Respondent denied the Appellant's application for the I/DD Waiver Program in a Notice of Decision dated September 16, 2024. (Exhibit D-2)
- 18) The September 16, 2024 Notice cited the denial as "Documentation presented does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility, finding a substantial adaptive deficit in the areas of *Self-Care* and *Capacity for Independent Living*. (Exhibit D-2)
- 19) The Respondent conceded that the Appellant had an eligible diagnosis for program eligibility.

### **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 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.

**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 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, conceded that the Appellant met the diagnostic criteria for program eligibility. However, because the Appellant only demonstrated substantial deficits in two major life areas of the required three or more, she did not meet the functionality criteria.

Mr. Bowen testified he reviewed the September 2024 IPE narratives and scores in the ABAS-3, which were derived from the responses provided by the Appellant's mother, [REDACTED]. The ABAS-3 produces results scaled to a mean of 10 and a standard deviation of 3, scores of 1 and 2 are deemed to be indicative of a substantial deficit in the area tested. In reviewing the ABAS-3 scores, the Appellant achieved qualifying scores in the areas of *Self-Care* and *Capacity for Independent Living* in the sub-domain areas of *Community Use*, *Home Living* and *Leisure*. Mr. Bowen pointed out that the Appellant had scores of 3 in the areas of *Communication* and *Functional Academics*, which are supported by the narratives and other achievement testing, which do not meet the policy definition of a substantial deficit. Mr. Bowen also noted that the Appellant's IEP showed that she knew her schedule and was able to go to her classrooms and knew what she needed to do without any assistance, which supported the test scores and other narratives regarding self-direction.

The September 2024 IPE also administered the WRAT-5 to test academic achievement, or functional academics, which has a mean of 100, a standard deviation of 15, and results below 55 indicating substantial delays in functional academics. The Appellant obtained WRAT-5 scores ranging from 63 to 68, which do not meet the policy definition of a substantial delay in functional academics. Mr. Bowen also noted that the Appellant's IEP indicated that she had special education classes for her Autism and spent 29% of her instructional time in the special education classes and was able to graduate high school with a standard diploma, which is not typical of those individuals who meet program eligibility.

The Appellant's mother, [REDACTED], testified that she believes the Appellant scored higher in functional academics than the narratives or testing would indicate. [REDACTED] stated that the Appellant wants to please others and does not ask for help. Additionally, it is noted that [REDACTED] a job coach with [REDACTED], testified that the Appellant was able to successfully participate in a work program at a nursing facility and at [REDACTED] with the support of an aide prompting her.

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. 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. Therefore, the Respondent's denial of the Appellant's I/DD Waiver program application is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Because the documentation submitted for program application did not show that the Appellant demonstrated substantial deficits in at least three out of the six major life areas

to meet the functionality criteria for the I/DD Waiver program, the functionality component of medical eligibility is unmet.

- 2) Because the functionality 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 7<sup>th</sup> day of January 2025.**

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**Lori Woodward, Certified State Hearing Officer**