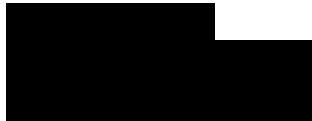




February 26, 2025



RE: [REDACTED] v. DoHS/BMS
ACTION NO.: 25-BOR-1077

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,

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: 25-BOR-1044

**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 February 12, 2025.

The matter before the Hearing Officer arises from the November 20, 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 with the Bureau for Medical Services. The Appellant appeared by his mother, ██████████. 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 November 20, 2024
- D-3 Amended Notice of Denial dated January 13, 2025
- D-4 Independent Psychological Evaluation dated October 29, 2024
- D-5 Psychological Report dated March 7, 1997
- D-6 Psychological Evaluation dated December 16, 1993
- D-7 Independent Psychological Evaluation dated February 14, 2020
- D-8 Notice of Denial dated March 27, 2020
- D-9 Independent Psychological Evaluation dated February 26, 2015
- D-10 Notice of Denial dated April 30, 2015
- D-11 Independent Psychological Evaluation dated November 28, 2014
- D-12 Notice of Denial dated January 6, 2015

- D-13 Psychological Evaluation dated November 4 and December 9, 2014
- D-14 Educational Evaluation dated March 6, 1997
- D-15 Psychological Evaluation dated August 11, 1993
- D-16 Individualized Education Plan dated June 5, 2003
- D-17 Individualized Education Plan dated May 14, 2004
- D-18 Individualized Education Plan dated June 5, 2002
- D-19 Individualized Education Plan dated May 30, 2000

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 October 29, 2024 (Exhibit D-4).
- 3) The Appellant was 37 years old at the time of the October 2024 IPE.
- 4) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2 and Borderline Intellectual Functioning (Exhibit D-4).
- 5) The Respondent sent a notice of denial on November 20, 2024, advising that the Appellant's application for the I/DD Waiver Program had been denied as the documentation submitted for review did not indicate an eligible diagnosis of Intellectual Disability or a related condition which is severe. Autism Spectrum Disorder must be diagnosed as Level 3 in order to be considered a severe related condition (Exhibits D-2 and D-3).

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 diagnoses of Autism Spectrum Disorder Level 2, and Borderline Intellectual Functioning do not meet the severity criteria as a qualifying

condition for program eligibility. Furthermore, Ms. Linton testified that a diagnosis of Intellectual Disability or a severe related condition must be given during the developmental period of prior to age 22. There was no evidence that the Appellant had been diagnosed with Intellectual Disability or a severe related condition prior to age 22.

Ms. Linton reviewed several psychological evaluations from the developmental period for the Appellant that were submitted with his application. In December 1993, at age 6, the Appellant was administered the Weschler Intelligence Scale for Children (WISC) and received an Intelligence Quotient (IQ) score of 73, which is in the borderline range of intellectual functioning (Exhibit D-6). The WISC administered to the Appellant in March 1997, at age 9, yielded an IQ score of 78 (Exhibit D-9). Another WISC administered to the Appellant in March 1997 resulted in an IQ score of 61. Ms. Linton noted that although an IQ score of 61 is within the mild range of Intellectual Disability, the administering psychologist commented that the result was not an accurate measure of the Appellant's abilities due to poor testing performance (Exhibit D-15).

Ms. Linton referred to the psychological evaluations for the Appellant that were administered after the Appellant attained age 22. The Appellant received IQ scores of 60 in November 2014, an IQ score of 72 in December 2014, an IQ score of 75 in February 2015, an IQ score of 69 in February 2020 and in his most recent IPE in October 2024 he received an IQ of 69. (Exhibits D-7, D-9, D-11 and D-13). Ms. Linton testified that the Appellant was not diagnosed with Autism until 2014, at age 27.

The Appellant's mother, [REDACTED] argued that Autism is congenital and would have been present during his developmental period. [REDACTED] stated Autism was not a diagnosis that was given years ago, and the Appellant was not tested for Autism until adulthood. [REDACTED] contended that the Appellant is unable to live independently and expressed concerns about his welfare once she and his father are unable to care for him.

The documentation provided failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or related condition, which is severe, that manifested during the developmental period of prior to age 22. Whereas the Appellant did not meet the diagnostic criteria for the I/DD Waiver Program, the Respondent's decision to deny the Appellant's application is affirmed.

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 documentation provided failed to establish that the Appellant had an eligible diagnosis of an Intellectual Disability or related condition, which is severe, that manifested during the developmental period of prior to age 22.
- 3) 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 the Appellant's application for services under the I/DD Waiver Program.

ENTERED this 26th day of February 2025.

Kristi Logan
Certified State Hearing Officer