



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
P.O. Box 1247  
Martinsburg, WV 25402

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

February 25, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1014

Dear Ms. [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 Health and Human Resources. 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  
State Hearing Officer  
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Taniua Hardy, BMS

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW**

██████████,

**Claimant,**

v.

**Action Number: 15-BOR-1014**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**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 West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on February 18, 2015, on an appeal filed January 5, 2015.

The matter before the Hearing Officer arises from the October 2, 2014 decision by the Respondent to deny Claimant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by Representative Linda Workman, psychological consultant to the WV DHHR, Bureau for Medical Services. The Claimant appeared by his mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1** Denial Letter, dated October 2, 2014
- D-2** I/DD Waiver Manual, Chapter 513.3 Applicant Eligibility and Enrollment Process, *et seq.*
- D-3** Independent Psychological Evaluation, dated September 25, 2014
- D-4** Independent Psychological Evaluation, dated April 23, 2012
- D-5** Individualized Education Program, ██████████, dated May 24, 2013

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) On or about October 2, 2014, the Claimant was notified that his application for benefits and services through the Title XIX I/DD Waiver Program was denied. The notice indicated the reason for denial was that he did not have an eligible diagnosis of either intellectual disability or a related condition which is severe. (Exhibit D-1)
- 2) The Respondent, represented by Linda Workman (Ms. Workman), a licensed psychologist consultant contracted by the Bureau for Medical Services (BMS), reviewed the I/DD Waiver Policy and proffered testimony specific to the medical eligibility determination completed on the Claimant. Ms. Workman explained that the I/DD Waiver Program is intended for individuals who are so compromised they require an institutional level of care. Ms. Workman explained that the Claimant's diagnoses of Autism Spectrum Disorder/Asperger's Disorder (Asperger's), Attention Deficit Hyperactivity Disorder (ADHD), Major Depressive Disorder (MDD), and Mild Borderline Intellectual Functioning, are not program eligible diagnoses. (Exhibits D-2 and D-3)
- 3) The Respondent referred to the Independent Psychological Evaluation (IPE) which was completed on September 25, 2014 by [REDACTED], an independent licensed psychologist. Ms. Workman stated that the Claimant's history and current behaviors did not indicate an eligible diagnosis. She reviewed the evaluative tests that were administered, noting that the Intellectual/Cognitive test, Wechsler Adult Intelligence Scale-IV (WASI-IV) found the Claimant to have a Full Scale IQ score of 74, which was identified as falling within a borderline range of ability. Ms. Workman stated that scores of 69 and below would meet the I/DD Waiver Program criteria. (Exhibit D-3) The IPE found the Claimant to have Asperger's Disorder, ADHD, MDD, and Borderline Intellectual Functioning – none of which are program-eligible diagnoses.
- 4) Ms. Workman also reviewed the Autism screening administered on the Claimant's IPE (Exhibit D-3) which showed the Gilliam Autism Rating Scale-Third Edition (GARS-3) found the Claimant to have an Autism Index Score of 93 which placed him at within the Level 2, very likely category. Ms. Workman testified that for Autism to be an eligible diagnosis, it must be severe, and the testing of the Claimant indicated that it was not.
- 5) Ms. Workman also pointed out that the Claimant has had a long-standing pattern of diagnoses and has never been given an eligible diagnosis since the age of 3.
- 6) The Claimant's representative agreed with Ms. Workman's findings, once they were explained in the context of program eligibility. She testified that she was frustrated with the difficulty of finding assistance programs for those individuals who were functioning at a borderline level like the Claimant.

## APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2 (Exhibit D-1), states that an individual who applies for I/DD Waiver Services must substantiate the presence of substantial adaptive deficits in three out of six major life areas, which are self-care, receptive or expressive language, learning, mobility, self-direction and the capacity for independent living.

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.2 reads, “Substantial deficits are defined as standardized scores of 3 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 percentile when derived from MR normative populations when mental retardation has been diagnosed and the scores are derived from a standardized measure of adaptive behavior . . . 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.”

## DISCUSSION

Policy for the Title XIX I/DD Waiver Program sets specific medical eligibility requirements. Among these is the diagnostic requirement. The evidence presented showed that the Claimant failed to meet the diagnostic criteria. The Claimant’s representative did not dispute the findings once they were fully explained by Ms. Workman. The Claimant does not meet the medical eligibility requirement for the I/DD Waiver Program, and the Department was correct to deny on this basis.

## CONCLUSION OF LAW

The evidence shows that the Claimant does not meet the diagnostic requirement for eligibility. The Claimant, therefore, does not meet the medical eligibility criteria for the Medicaid I/DD Waiver Program.

## DECISION

It is the decision of the State Hearing Officer to **uphold** the Department’s action to deny Claimant’s application for the Title XIX I/DD Waiver Program.

**ENTERED this 25<sup>th</sup> day of February 2015.**

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**Lori Woodward  
State Hearing Officer**