



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Charleston, West Virginia 25313
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Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 31, 2015

[REDACTED]

RE: [REDACTED] V. WV DHHR
ACTION NO.: 15-BOR-1033

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,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1033

**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 March 18, 2015, on an appeal filed January 6, 2015.

The matter before the Hearing Officer arises from the January 16, 2015 decision by the Respondent to deny Claimant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by ██████████, Licensed Psychologist consultant to the WV Department of Health and Human Resources (WV DHHR), Bureau for Medical Services (BMS). The Claimant appeared by her mother and legal guardian, ██████████. Appearing as a witness for the Claimant was ██████████, the Claimant's grandmother. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Correspondence from WV DHHR to the Claimant dated October 8, 2014, and amended on January 16, 2015
- D-2 WV Medicaid I/DD Waiver Policy Manual §513.3 - Applicant Eligibility and Enrollment Process (excerpts)
- D-3 Independent Psychological Evaluation of Claimant by ██████████, MA, evaluation date September 17, 2014
- D-4 Psychological Evaluation of Claimant by ██████████, M.D., evaluation date May 16, June 23 and July 1, 2009
- D-5 Progress Notes of Claimant by ██████████, D.O., dated August 18, 2014
- D-6 ██████████ Children's Hospital After Visit Summary dated February 2, 2012
- D-7 ██████████ Children's Hospital medical records dated December 8, 2010

- D-8 ██████████ Children's medical records dated April 7, 2011
- D-9 Professional Therapy Services, Inc., Speech and Language Diagnostic Report dated September 4, 2009
- D-10 ██████████ Psychological Services Discharge Note dated August 15, illegible year
- D-11 Individualized Education Program dated May 16, 2014

Claimant'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) An application for the Title XIX I/DD Waiver Program (I/DD Waiver Program) was completed on the Claimant's behalf and denied by the Department on October 8, 2014, and amended on January 16, 2015. The denial letter indicated the Claimant's application was denied because the Claimant did not have an eligible diagnosis of intellectual disability or a related condition which was severe. (Exhibit D-1)
- 2) The Department's witness, ██████████ (Ms. ██████████ is a licensed psychologist contracted with the Bureau for Medical Services to complete assessments for the I/DD Waiver Program. Ms. ██████████ testified that a review of medical records provided in support of the Claimant's application included diagnoses of Asperger's, behavioral aggression, impulse control and anxiety consistent with Attention Deficit/Hyperactivity Disorder (ADHD), Anxiety Disorder-NOS, Growth deficiency (rule out Temporal lobe seizures), Mood Disorder, possible bi-polar disorder, language disorder and obsessive compulsive disorder. Ms. ██████████ added that mental illnesses such as ADHD and OCD are excluded as eligible diagnosis for the I/DD Waiver Program. (Exhibits D-1, D-3, through D-10)
- 3) The Claimant's Independent Psychological Evaluation (IPE) included the results of the September 17, 2014 Wechsler Intelligence Scale for Children (WISC-IV), administered by ██████████, MA. The Claimant's full scale score of 86 was identified as being in the average to low-average range. A psychological evaluation was completed by ██████████, MA, on May 6, June 23, and July 1, 2009. The Claimant was administered the WISC-IV and assessed with a full scale IQ of 105, which is considered in the average range of intellectual functioning. On October 12, 2010, the Claimant was administered the Stanford-Binet Intelligence Scales - Fifth Edition (SB-V) and was assessed with a full scale IQ of 89, which is in the low average range. Ms. ██████████ stated that in order to be considered an eligible score, the scale score must be three (3) standard deviations below the mean. The Claimant would have to score 55 or below on the scale to meet the I/DD Waiver Program criteria. (Exhibit D-2, D-3, D-4 and D-7)

- 4) The September 17, 2014 IPE also included an autism screening. The Childhood Autism Rating Scale (CARS) was administered. The Claimant's CARS score of 30 is assessed as an autism spectrum disorder in the mild range. Ms. [REDACTED] testified that the score would have to be in the severe range to meet the policy requirements for an eligible diagnosis. (Exhibit D-3) The Gilliam-Asperger's Disorder Scale (GADS) assessment was administered with the Claimant on October 12, 2010. The Claimant scored an Asperger's Quotient of 88, which is considered in the probable range for a diagnosis of Asperger's syndrome, which Ms. [REDACTED] reiterated is not an eligible diagnosis for the I/DD Waiver Program. (Exhibit D-7)
- 5) The Claimant's mother, [REDACTED] (Ms. [REDACTED] testified that at the time of the September 2014 IPE, she submitted medical records to Dr. [REDACTED] documenting that the Claimant was diagnosed by Dr. [REDACTED] as having Asperger's with encephalopathy. Ms. [REDACTED] testified that those records were not received by the Respondent and were not used in completing its determination for eligibility. Ms. [REDACTED] referred the Claimant to the notice of denial which listed all medical records provided to the Department that were used in completing the assessment. Ms. [REDACTED] added that even had the Claimant presented with an eligible diagnosis, if she would have to have demonstrated substantial deficits in three or more of the six major life areas. (Exhibit D-1)
- 6) Ms. [REDACTED] testified that her daughter needs help and that she does not think the test scores reflect the reality of the situation. She reported that she has to wash her daughter's hair, face and back and that the Claimant needs assistance with dressing, that she has trouble with undergarments and will wear inappropriate clothing if it is not laid out for her. Ms. [REDACTED] reported that the Claimant is unable to self-regulate. She reported that food in the house has to be hidden or her daughter will eat non-stop. She stated that her daughter is unaware of potential dangers, talking to strangers and unaware of traffic. Ms. [REDACTED] reported that the Claimant will bite herself and cause her lips to chap to the point of bleeding. She added that her daughter requires 24-hour supervision and assistance.
- 7) The Claimant's grandmother, [REDACTED] (Ms. [REDACTED] testified that she agreed with Ms. [REDACTED] testimony that the Claimant requires constant supervision. Ms. [REDACTED] added that the Claimant gets agitated and will run away from her, which makes her nervous due to the proximity of the river to their home. She indicated that the Claimant needs assistance in learning to be able to control herself when she is agitated.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513- *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3 states that an applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined through review of

an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN).

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.1, lists examples of related conditions which may, if severe and chronic in nature, be program eligible diagnoses, include but are not limited to autism, Traumatic Brain Injury, Cerebral Palsy; Spinal Bifida, and any condition, other than mental illness, closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires services similar to those required for persons with mental retardation.

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2, 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

The Medical Eligibility Contracted Agency (MECA) determines the qualification for an IDD level-of-care based on an IPE that verifies the applicant has mental retardation or a related condition which is severe and chronic in nature. Policy requires the MECA to rely on test scores derived from IPE’s, along with narratives and notes which support the scores. **Narratives and notes are not a substitute for eligible scores and cannot be used alone to confirm medical eligibility.** (*Emphasis added*)

In order to establish medical eligibility for participation in the Medicaid I/DD Waiver Program, an individual must meet the three criteria of diagnosis, functionality, and the need for active treatment. Initial medical eligibility is determined through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN). If the criteria of medical diagnosis are not met, the individual cannot be determined eligible for the IDD/Waiver Program.

Evidence established that the Claimant failed to meet the criteria of an eligible diagnosis of mental retardation or that of a related condition which is severe in nature. While Asperger’s is

on the autism spectrum, it is considered a mild condition on the spectrum and is not an eligible diagnosis. Additionally, the Claimant's IQ scores were consistently measured in the low-average range. The Claimant failed to provide evidence of a diagnosis of mental retardation or a related condition which is severe.

While the Claimant testified that her daughter had been diagnosed with encephalopathy, no evidence was submitted to document an eligible diagnosis.

CONCLUSIONS OF LAW

Claimant's application for the Title XIX I/DD Waiver Program did not meet the policy requirement of a diagnosis of mental retardation or a related condition which is severe in nature as defined by policy. Therefore, the Claimant does not meet the medical component of eligibility.

DECISION

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

ENTERED this _____ Day of March 2015.

**Donna L. Toler
State Hearing Officer**