



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 11, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1174

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, Department Representative

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1174

**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 April 16, 2015, on an appeal filed January 29, 2015.

The matter before the Hearing Officer arises from the January 16, 2015 decision by the Respondent to deny the Claimant medical eligibility for the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by ██████████. The Claimant appeared *pro se*. Appearing as a witness for the Claimant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of denial, dated January 16, 2015
- D-2 Independent Psychological Evaluation (IPE) of Claimant, evaluation date December 17, 2014
- D-3 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services (excerpt)

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 Claimant was an applicant for I/DD Waiver Program services.
- 2) The Respondent, through its Bureau for Medical Services, contracts with [REDACTED] to perform functions related to the I/DD Waiver Program, including eligibility determination. [REDACTED], a licensed psychologist and licensed school psychologist with [REDACTED], made the eligibility determination regarding the Claimant.
- 3) Ms. [REDACTED] has been in private practice as a psychologist since 1981 and has extensive experience conducting psychological evaluations over the course of her career.
- 4) Ms. [REDACTED] reviewed the Claimant's IPE (Exhibit D-2). As a result of this review, the Respondent denied the Claimant's application based on unmet medical eligibility and issued a notice (Exhibit D-1) dated January 16, 2015, advising the Claimant of the basis for denial. The notice states, in pertinent part:

Documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe. History, as reported, is inconsistent with the need for an I/DD level of care.

- 5) The Claimant's IPE (Exhibit D-2) listed diagnoses of Major Depressive Disorder, Anxiety Disorder, and Borderline Intellectual Functioning. Ms. [REDACTED] testified that these are not eligible diagnoses for the I/DD Waiver Program. The IPE reported the Claimant achieved a Full Scale IQ score of 74 on the Weschler Adult Intelligence Scale-IV (WAIS-IV). The evaluating psychologist noted the Claimant's WAIS-IV scores "indicate that she is functioning in the borderline range of intelligence."
- 6) The evaluating psychologist for the Claimant's IPE (Exhibit D-2) additionally noted the Claimant's adaptive behavior testing results "appear to generally underestimate her overall level of adaptive functioning, particularly in light of her educational and vocational background."
- 7) [REDACTED], the Claimant's sister, testified the Claimant suffers from anxiety attacks. Ms. [REDACTED] testified the Claimant received special education services in school and did not have good grades. She testified the Claimant has to be prompted to complete some tasks, and that her performance of other tasks has to be corrected at times. The Claimant was employed in the past but is not presently. Ms. [REDACTED] hoped the I/DD Waiver Program could help her sister with socialization.

APPLICABLE POLICY

The policy regarding initial medical eligibility for the I/DD Waiver Program is located in Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, at §513.3.2. This policy requires applicants to meet medical eligibility criteria in each of the following categories: diagnosis, functionality, and the need for active treatment.

The policy regarding diagnostic eligibility is located at §513.3.2.1, and requires applicants to have a diagnosis of mental retardation 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.

DISCUSSION

The medical eligibility component under dispute for the Claimant is diagnostic. The expert witness for the Department testified that there was no documentation that the Claimant has an eligible diagnosis for the program. Evidence submitted clearly supports this testimony. Without the diagnostic component, medical eligibility for the I/DD Waiver Program cannot be established for the Claimant.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires an eligible diagnosis. Because the Claimant does not have a diagnosis of mental retardation or a related condition with concurrent substantial deficits manifested prior to the age of 22, the Claimant does not meet the diagnostic component of medical eligibility.
- 2) Because the diagnostic component could not be established, medical eligibility as a whole for the program could not be established and the Claimant's application must be denied.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's denial of Claimant's application for services under the I/DD Waiver Program.

ENTERED this ____ Day of May 2015.

**Todd Thornton
State Hearing Officer**