



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 28, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1449

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1449

**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 23, 2015, on an appeal filed March 2, 2015.

The matter before the Hearing Officer arises from the December 22, 2014, decision by the Respondent to deny the Claimant services under the I/DD Waiver program.

At the hearing, the Respondent appeared by ██████████, consulting psychologist with the Bureau for Medical Services. The Claimant appeared by his mother, ██████████. Appearing as a witness for the Claimant was ██████████, Birth to Three. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Medicaid Provider Manual, Chapter 513 – I/DD Waiver Services - §513.3
- D-2 Notice of Denial dated December 22, 2014
- D-3 Psychological Evaluation dated November 17, 2014

Claimant's Exhibits:

- C-1 Initial Treatment Plan for Applied Behavior Analysis dated January 27, 2015
- C-2 Comprehensive Psychological Evaluation dated August 28, 2014
- C-3 Social History (undated)

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 Department issued a Notice of Decision (D-2) to the Claimant on December 22, 2014, advising that his application for services under the I/DD Waiver Program was denied. This notice indicated that the documentation submitted did not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for I/DD Waiver eligibility.
- 2) The Respondent, represented by [REDACTED], a psychologist consultant contracted by the Bureau for Medical Services, reviewed the I/DD Waiver Policy (D-1) and proffered testimony specific to the medical eligibility determination completed on the Claimant. As a matter of record, Respondent acknowledged the Claimant has an eligible diagnosis, however, the clinical documentation submitted for eligibility failed to demonstrate that the Claimant met the functionality criteria – substantial adaptive deficits in at least three (3) of the six (6) major life areas. Respondent stipulated that the Claimant is demonstrating a substantial adaptive deficit in the major life area of self-care; however, no other deficits were identified.
- 3) The Claimant was administered (D-3) the Adaptive Behavior Assessment System (ABAS) on November 17, 2014, during a psychological evaluation. A substantial adaptive deficit is identified through standardized scores of three (3) standard deviations below the mean or less than one percentile. The mean of this test is a ten (10) and an eligible score for the ABAS would be a scaled score of one (1) or a two (2). The Claimant had eligible scores in the major life area of self-care and social, a sub-domain of the major life area of capacity for independent living. Eligible scores in at least three of the six sub-domain areas under capacity for independent living are required to be considered a substantial adaptive deficit in this area.
- 4) The Developmental Profile 3 (DP-3) was administered (D-3) during the psychological evaluation, which measures child development and functioning. The mean of this test is 100, with a standard deviation of 15. An eligible score for this test would be a 55 or below. The Claimant did not have an eligible score on the DP-3 in the areas measured.
- 5) The Department contended that without eligible test scores in the at least three (3) out of the six (6) major life areas, eligibility for the I/DD Waiver program could not be established.
- 6) [REDACTED], representative for the Claimant, argued that the Claimant exhibits deficits with communicating his needs and social interaction with his peers. The Claimant does not recognize dangers to his safety and requires constant supervision. The Claimant's

parents need assistance to continue providing the level of care he is currently receiving, or his abilities will decline.

- 7) The Claimant's mother testified that they are doing all that they can for the Claimant, but his health insurance is limited in covering the level of care he needs.

APPLICABLE POLICY

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 - 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 three (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

In order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality and need for active treatment criteria. While the Claimant met the diagnostic criteria, functionality criteria is only met when clinical documentation confirms that the individual is demonstrating substantial adaptive deficits in three (3) of the six (6) major life areas.

A review of the evidence submitted at the hearing revealed the Claimant is demonstrating only one (1) substantial adaptive deficit (self-care) in the major life areas as documented by his test scores. Policy requires the presence of eligible test scores of three (3) standard deviations below the mean for an adaptive deficit to be confirmed.

CONCLUSIONS OF LAW

Whereas the evidence submitted failed to demonstrate that the Claimant meets the functionality criteria required for participation in the I/DD Waiver Program, medical eligibility for participation in the I/DD Waiver Program cannot be established.

DECISION

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

ENTERED this 28th day of April 2015

**Kristi Logan
State Hearing Officer**