



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 28, 2015

[REDACTED]

RE: [REDACTED] V. WV DHHR
ACTION NO.: 15-BOR-1677

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: Kimberly Stitzinger-Jones, Assistant Attorney General

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1677

**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 May 28, 2015, on an appeal filed March 30, 2015.

The matter before the Hearing Officer arises from the February 24, 2015 decision by the Respondent to deny Claimant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent was represented by counsel, Kimberly Stitzinger-Jones, Assistant Attorney General. Appearing as a witness for the Department was ██████████, Licensed Psychologist consultant to the WV Department of Health and Human Resources (WV DHHR), Bureau for Medical Services (BMS). The Claimant appeared by counsel, ██████████, Esquire, Legal Aid of West Virginia. Appearing as a witness for the Claimant was her mother and legal guardian, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Medicaid I/DD Waiver Policy Manual §513.3 - Applicant Eligibility and Enrollment Process (excerpts)
- D-2 Independent Psychological Evaluation of Claimant by ██████████, MA, evaluation date February 4, 2015
- D-3 Correspondence from WV DHHR to the Claimant, dated February 24, 2015

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 February 24, 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-3)
- 2) The Claimant's Independent Psychological Evaluation (IPE) included the results of the September 17, 2014 Wechsler Preschool Primary Scale of Intelligence (WPPSI-III), administered by [REDACTED], MA. The Claimant's full scale score of 83 was identified as being in the low-average range. (Exhibit D-2)
- 3) In order to meet the eligibility criteria of having an Intellectual Disability or related condition which is severe, the scale score on the WPPSI-III must be three (3) standard deviations below the mean. The Claimant would have to score 69 or below on the scale to meet the I/DD Waiver Program criteria. (Exhibit D-1)
- 4) The Claimant's diagnoses, outlined on the IPE, included Hip Dysplasia with correction and Breathing problems, neither of which is an intellectual disability or related condition which constitutes a severe and chronic intellectual disability. (Exhibit D-2)

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*, §513.3.2.2 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 Claimant’s mother testified that she was required to apply for the I/DD Waiver Program, on behalf of her daughter, as a condition of her eligibility for the WV WORKS cash assistance Program through the Department of Health and Human Resources. The Claimant’s mother testified she was required by her WV WORKS case worker to complete paperwork to request the assistance of Legal Aid to represent her when her daughter’s application for the I/DD Waiver Program was denied. The Claimant’s mother testified that she was told that she would be subject to a sanction if she did not follow-through with both the application and the appeal of the Department’s denial.

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. The Claimant’s IQ score was 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.

CONCLUSIONS OF LAW

The 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 May 2015.

**Donna L. Toler
State Hearing Officer**