



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

May 21, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1849

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: Tania Hardy, BMS

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

██████████,

**Claimant,**

v.

**Action Number: 15-BOR-1849**

**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 13, 2015, on an appeal filed February 20, 2015.

The matter before the Hearing Officer arises from the February 2, 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 ██████████, a psychologist consultant to the WV DHHR, Bureau for Medical Services. The Claimant was present but appeared by ██████████. Appearing as witnesses for the Claimant were ██████████, Case Manager with ██████████, therapist with ██████████, ██████████, Probation Officer. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 I/DD Waiver Manual, §513.3, *et. seq.*
- D-2 Amended Notice of Denial, dated February 2, 2015
- D-3 Independent Psychological Evaluation (IPE) completed on January 12, 2015
- D-4 Independent Psychological Evaluation (IPE) completed on December 18, 2013
- D-5 Amended Notice of Denial, dated November 13, 2014

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 February 2, 2015, the Claimant was notified that his application for benefits and services through the Medicaid I/DD Waiver Program was denied. This notice indicates that the documentation submitted does not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for program eligibility. (Exhibit D-2)
- 2) The presence of substantial adaptive deficits must be supported not only by relevant test scores, but also by the narrative descriptions contained in the documentation submitted for review.
- 3) The Claimant was found to have an eligible diagnosis, however, the clinical documentation submitted for eligibility failed to demonstrate that the Claimant meets the functionality criteria – substantial adaptive deficits in at least three (3) of the six (6) major life areas. The Claimant was found to have a substantial adaptive deficit only in the area of learning.
- 4) An Adaptive Behavior Scale (ABS) standard score of ten (10) is the average (mean), so a program-eligible score – three (3) standard deviations below the mean - is one (1). Additionally, however, an ABS standard score of two (2) is accepted as an eligible score, as this score is typically below one (1) percentile.
- 5) The narrative and ABS scores on the Claimant’s January 12, 2015 Independent Psychological Evaluation (IPE) did not indicate any substantial deficits for program eligibility in the area of adaptive behaviors. (Exhibit D-3)

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.2 provides that an individual who applies for I/DD Waiver Services must demonstrate the presence of substantial adaptive deficits in three (3) out of six (6) identified major life areas - self-care, receptive or expressive language, learning, mobility, self-direction and the capacity for independent living. This policy goes on to state, in pertinent part - “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**

In order to establish medical eligibility for participation in the Medicaid 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 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 reveals the Claimant is only demonstrating a substantial deficit in the major life area of learning. No additional major life area deficits can be given. As a result, medical eligibility for participation in the I/DD Waiver Program cannot be established.

## **CONCLUSION OF LAW**

The evidence submitted at the hearing demonstrates the Claimant does not meet the medical eligibility criteria required for participation in the Medicaid I/DD Waiver Program.

## **DECISION**

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

**ENTERED this 21<sup>st</sup> day of May 2015.**

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**Lori Woodward, State Hearing Officer**