



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
416 Adams St., Suite 307  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

August 6, 2015



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-2103

Dear Mr. [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,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

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

cc: Taniua Hardy, BMS / [REDACTED], APS Healthcare / [REDACTED], [REDACTED]

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2103**

**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 August 5, 2015, on an appeal filed May 21, 2015.

The matter before the Hearing Officer arises from the April 20, 2015 decision by the Respondent to deny Appellant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by ██████████, a psychologist consultant to the WVDHHR's, Bureau for Medical Services. The Appellant was represented by his mother, ██████████. Appearing as a witness for the Appellant was ██████████, Special Education Parent Coordinator, RESA. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.3.2, Initial Medical Eligibility
- D-2 Notice of denial dated 4/20/15
- D-3 Independent Psychological Evaluation (IPE) completed on 3/24/15
- D-4 ██████████ Psychological Evaluation completed in May 2014
- D-5 ██████████ Psychological Intake and Assessment completed on 7/8/14

**Appellant's Exhibits:**

- C-1 Correspondence from ██████████, Special Education Teacher, ██████████ dated 5/18/15

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 or about April 20, 2015, Appellant was notified that his application for benefits and services through the Medicaid I/DD Waiver Program was denied. This notice indicates - "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 nor [sic] the need for an ICF/IID level of care."
- 2) Respondent, represented by [REDACTED], a psychologist consultant contracted by the Bureau for Medical Services (BMS), reviewed the I/DD Waiver Policy and proffered testimony specific to the medical eligibility determination completed on the Appellant. As a matter of record, Respondent cited Exhibits D-3, D-4 and D-5 and noted that the Appellant's diagnoses (ADHD, Phonological Disorder and Borderline Intellectual Functioning) do not qualify as an intellectual disability (formerly mental retardation) or a related condition. Respondent noted that pursuant to policy, these conditions are not closely related to an intellectual disability, as these diagnoses do not result in impairment of general intellectual functioning, or adaptive behavior, similar to those individuals with an intellectual disability.
- 3) Appellant's representatives did not dispute the clinical documentation relied upon by Respondent.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2.1, provides that the applicant must have a diagnosis of intellectual disability (mental retardation) with concurrent substantial deficits manifested prior to the age of 22, or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. Among the diagnoses considered to be related are: Autism, traumatic brain injury, cerebral palsy, spina bifida and any condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires services similar to those required for persons with intellectual disability.

### **DISCUSSION**

In order to establish medical eligibility for participation in the Medicaid I/DD Waiver Program, an individual must meet the diagnostic criteria. A review of the clinical evidence submitted in this case confirms the Appellant has not been diagnosed with intellectual disability or a related condition. As a result, medical eligibility for participation in the I/DD Waiver Program cannot be established.

### **CONCLUSION OF LAW**

The Appellant does not meet the diagnostic criteria necessary to establish medical 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 Appellant's application for the Title XIX I/DD Waiver Program.

**ENTERED this \_\_\_\_ Day of August 2015.**

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**Thomas E. Arnett  
State Hearing Officer**