



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661
(304) 235-4680

Karen L. Bowling
Cabinet Secretary

August 31, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2423

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Tania R. Hardy, WV Bureau for Medical Services
APS Healthcare, Charleston, WV

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2423

**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 26, 2015, on an appeal filed June 29, 2015.

The matter before the Hearing Officer arises from the April 27, 2015 decision by the Respondent to deny the Appellant's application to the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by Representative ██████████, psychological consultant to the WV DHHR, Bureau for Medical Services. The Appellant appeared *pro se*, by his Representative and mother ██████████. Appearing as a witness for the Appellant was ██████████, his occupational therapist from WV Birth to Three. All participants 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, Applicant Eligibility and Enrollment Process
- D-2 Letter of application denial for the I/DD Waiver Program, dated April 27, 2015
- D-3 Independent Psychological Evaluation from ██████████, ██████████, MA, evaluation date April 7, 2015

Appellant's Exhibits

- A-1 Early Intervention Developmental Re-Evaluation from ██████████, ██████████, evaluation date April 9, 2015

- A-2 Developmentally-Based Speech Language Pathology Annual Assessment from WV Birth to Three, evaluation date April 29, 2015
- A-3 Psychological Evaluation from [REDACTED], evaluation date January 30, 2015
- A-4 WV Birth to Three Progress Summary, dated May 6, 2015
- A-5 Evaluation from [REDACTED], assessment date November 10, 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) The Appellant's mother applied for the Title XIX I/DD Waiver Program on the Appellant's behalf.
- 2) Pursuant to the Appellant's application for the I/DD Program, [REDACTED] of [REDACTED], completed a psychological evaluation on the Appellant on April 7, 2015 (Exhibit D-3).
- 3) Based on the results of the psychological evaluation and other information from the Appellant's application, the WV Department of Health and Human Resources (hereinafter referred to as the Department) determined the Appellant was not medically eligible for the program due to the lack to substantial limitations in three out of six major life areas, and issued a denial letter (Exhibit D-2) on April 27, 2015.
- 4) The Appellant's representative, his mother, requested a fair hearing to protest the Department's denial of the Appellant's application.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.3.2 (Exhibit D-1), states that an individual who applies for I/DD Waiver Services must meet medical eligibility criteria in each of the three areas of diagnosis, functionality and the need for active treatment. §513.3.2.1 states that the applicant must 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. §513.3.2.2 states that the applicant must have substantial deficits in at least three of the six major life areas identified as self-care, receptive or expressive language, learning, mobility, self-direction and the capacity for independent living. In order to have a deficit for the area of the capacity for independent living, the applicant must have deficits in at least three of six sub-categories, which are home living, social skills, employment, health

and safety, community use and leisure activities. §513.3.2.2 further states that the presence of substantial deficits must be supported not only by the relevant test scores, but also by the narrative descriptions contained in the documentation submitted for review. §513.3.2.2 defines a substantial deficit as a standardized score of three 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.

DISCUSSION

According to the Appellant's letter of denial for the I/DD program (Exhibit D-2), the Applicant's application was denied because the documentation submitted with the application did not "support the presence of substantial adaptive deficits in three or more areas of the six major life areas identified for Waiver eligibility." Out of the six major life areas listed in the Applicable Policy section above, the Appellant demonstrated a substantial deficit only in the area of receptive or expressive language, according to the denial letter.

The psychological evaluation conducted by [REDACTED] (Exhibit D-3) reports the results of the Adaptive Behavior Assessment System – Second Edition (ABAS-II), which was administered as part of the evaluation. The Department's representative testified that this instrument is particularly relevant to an application for the I/DD Waiver Program because it specifically measures all six major life areas listed in policy, including the six sub-domains listed under the major life area of capacity for independent living. The ABAS-II reports scaled scores with a mean (average) of ten and a standard deviation of three. The Department's witness stated that the Department considers scores of one or two to be three standard deviations below the mean. She added that the only major life area wherein the Appellant scored a one or two was in the area of communication, which corresponds to the area of receptive or expressive language as listed in policy.

The Appellant testified that the results of the ABAS-II were distorted due to the manner in which the instrument was administered. She stated that a psychologist at [REDACTED] merely handed her a booklet containing a questionnaire about her son's behavior. She testified that no one from the practice sat with her to help her determine the best answers to many of the items, nor did they assist her with questions she did not understand. However, she did not submit into evidence any documentation to contradict the results of the ABAS-II.

The Appellant entered into evidence a Developmentally-Based Speech Language Pathology Annual Assessment (Exhibit A-2) conducted by a Speech Language Pathology Practitioner from the WV Birth to Three program. This assessment, conducted on April 29, 2015, reported the results of the Pre-School Language Scale – 4th Edition. This instrument assessed the Appellant's receptive language in the lowest one percentile for his age group, 14 months below his chronological age level. It assessed his expressive language also in the lowest one percentile of his age group. This instrument did not measure any of the five other major life areas as listed in the policy.

The Appellant entered into evidence a Psychological Evaluation from [REDACTED], [REDACTED] (Exhibit A-3). This evaluation reported the results of the Childhood Autism Rating Scale administered to the Appellant. This instrument reports scores from one to four, a one representing no evidence of inappropriate or abnormal functioning, and a four indicating more severely abnormal functioning in that area. However, none of the areas this instrument measures correspond to the six major life areas listed in policy except “verbal communication” and “nonverbal communication,” which correspond to expressive or receptive language.

The Appellant’s representative and her witness offered testimony regarding his maladaptive behaviors, especially regarding his inability to perceive risks in his environment. However, they did not provide evidence or testimony to support their position that the Appellant had substantial limitations in any more of the major life areas listed in policy.

CONCLUSION OF LAW

Appellant’s application for the Title XIX I/DD Waiver Program did not meet the policy requirement stated in Chapter 513.3.2.2, that documentation must demonstrate the applicant has substantial deficits in at least three of the six major life areas identified as self-care, receptive or expressive language, learning, mobility, self-direction and the capacity for independent living.

DECISION

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

ENTERED this 31st Day of August, 2015.

Stephen M. Baisden
State Hearing Officer