



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661
(304) 235-4680

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

October 21, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2427

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: Taniua 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-2427

**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 October 21, 2015, on an appeal filed June 29, 2015. This hearing originally was scheduled for September 16, 2015, but was rescheduled at the request of the Appellant's representative.

The matter before the Hearing Officer arises from the May 19, 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 by his Representative and mother ██████████. Both participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Letter of application denial for the I/DD Waiver Program, dated May 19, 2015
- D-2 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.3, Applicant Eligibility and Enrollment Process
- D-3 Independent Psychological Evaluation from ██████████, MA, evaluation date April 14, 2015

Appellant's Exhibits

- A-1 Letter from Director ██████████, ██████████, dated August 24, 2015

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], completed a psychological evaluation on the Appellant on April 14, 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 of substantial limitations in three out of six major life areas, and issued a denial letter (Exhibit D-1) on May 19, 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 letter of denial for the I/DD program (Exhibit D-1), the Appellant'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." According to the denial letter, the Appellant did not demonstrate substantial deficits in any of the six major life areas described in the Applicable Policy section above.

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 Appellant did not score a one or a two in any major life area measured in the instrument.

The Appellant scored as follows on the ABAS-II: Self-care, 6; Language (Communication), 6; Learning (Functional Academics), 14; Mobility (Motor skills), 9; Self-direction, 10. The sixth area is Capacity for Independent Living, which includes six sub-domains. In these sub-domains, the Appellant scored as follows: Home Living, 6; Social skills, 6; Health and Safety, 7; Community Use, 7; Leisure Activities, 8. Due to the Appellant's age, the instrument did not measure the Employment sub-domain.

The Appellant did not question the results of the ABAS-II, and she stated she understood why the Department denied her son's application for the I/DD Program. She testified that since the psychological evaluation, her son's behavior has worsened, to the point that he has a hard time functioning with other children. She stated that he also takes out his frustrations on her when he comes home from the pre-kindergarten school he attends at present. She added that his behavior has progressed to the point that she does not "know how to handle him anymore."

To illustrate her son's behavioral problems, the Appellant's representative testified that the administrators at her son's day care center required her to remove him from the facility. She submitted as evidence a letter from the Director of [REDACTED], his former day care center. The letter (Exhibit A-1) states in part, "[Appellant] was enrolled at [REDACTED] from May 2015 – July 2015. We loved having [Appellant] at [REDACTED]; however, in July it was clear that we could no longer keep him at our school . . . On a good day . . . it seemed just a compulsion for him to touch others. On what we would call a bad day, he choked, hit, smacked,

pulled hair, pulled on faces, scratched, etc. other children to the point we could not safely keep him in the classroom. It was solely because [Appellant] was harming other children that we had to ask him to leave.”

CONCLUSION OF LAW

The 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 22nd Day of October, 2015.

Stephen M. Baisden
State Hearing Officer