



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

September 9, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2628

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

cc: Tania Hardy, BMS

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-2628**

**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 September 2, 2015, on an appeal filed July 23, 2015.

The matter before the Hearing Officer arises from the July 8, 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 WV DHHR, Bureau for Medical Services. The Appellant was present but appeared by his grandmother, ██████████. Appearing as witnesses for the Appellant was ██████████ Service Coordinator with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Denial, dated July 8, 2015
- D-2 Independent Psychological Evaluation (IPE) completed on June 22, 2015
- D-3 Discharge Summary from ██████████, dated April 20, 2010
- D-4 Psychological Evaluation, dated October 6, 2009
- D-5 I/DD Waiver Manual, §513.3, *et. seq.*

**Appellant's Exhibits:**

- A-1 Letter from ██████████, M.A., L.P.C., A.L.P.S., ██████████, dated August 31, 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) On July 8, 2015, the Appellant was notified that his application for benefits and services through the Medicaid I/DD Waiver Program (Program) was denied. This notice indicates that the documentation submitted does not support the presence of an eligible diagnosis for the Program of intellectual disability or a related condition which is severe, in addition to not supporting the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for program eligibility. (Exhibit D-1)
- 2) The Appellant was found to have a diagnosis of Asperger's Disorder and Bipolar Disorder, NOS (Not Otherwise Specified) with intellectual functioning within the borderline range of ability during his June 22, 2015 Independent Psychological Evaluation (2015 IPE) (Exhibit D-2), which was consistent with his 2009 Psychological evaluation (Exhibit D-4).
- 3) The narrative and test scores on the Appellant's 2015 IPE did not indicate any substantial deficits for program eligibility in the area of adaptive behaviors except in the area of learning.
- 4) The Appellant did not meet the criteria of substantial delay in the testing administered in the 2015 IPE. (Exhibit D-2)

### **APPLICABLE POLICY**

WV Medicaid Provider Manual §513.3.2 states that in order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality and need for active treatment criteria.

WV Medicaid Provider Manual §513.3.2.1, explains 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. Examples of related conditions which, if severe and chronic in nature, may make an individual eligible for the I/DD Waiver Program include, but are not limited to, the following: Autism; Traumatic brain injury; Cerebral Palsy; Spina Bifida; and any condition, other than mental illness, found to be closely related to mental retardation because this 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. Additionally, the applicant who has a diagnosis of mental retardation or a severe related condition with associated concurrent adaptive deficits must meet the following

requirements: Likely to continue indefinitely; and, must have the presence of at least 3 substantial deficits out of the 6 identified major life areas listed in Section 513.3.2.2.

WV Medicaid Provider Manual §513.3.2.2, instructs that the applicant must have substantial deficits in at least 3 of the 6 identified major life areas: Self-care; Receptive or Expressive Language (communication); Learning (functional academics); Mobility; Self-direction; and, Capacity for Independent Living which includes the six (6) sub-domains of home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three (3) of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined as standardized scores of three (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 scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. 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, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

WV Medicaid Provider Manual §513.3.2.3, stipulates that the documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

## **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. Although a Program applicant must meet all three criteria for program eligibility, the Appellant's Program application was denied based on not meeting two of the criteria: diagnostic and functionality.

The Appellant's representative believes that with proper training and assistance the Appellant would be able to live in an apartment on his own. She is concerned that because of her own health problems and advanced age she will not be around to help the Appellant with taking his anti-psychotic medications properly. She is additionally concerned because the Appellant has no understanding of money and has impaired judgment.

██████████ (Ms. ██████████ the Respondent's witness, testified that she is a licensed psychologist in the state of West Virginia, and that her office, ██████████

██████████ is a contracted agency with the West Virginia Department of Health and Human Resources (Department), responsible for medical eligibility determinations for the Title XIX I/DD Waiver Program. In this capacity, Ms. ██████████ reviewed the application of the Appellant. Ms. ██████████ testified that review of the application showed that the Appellant has been determined to have borderline intellectual functioning with a diagnosis of Level 2 (moderate) Asperger's Disorder and Bipolar Disorder, NOS. Ms. ██████████ stated that although Asperger's is within the Autism spectrum, it is not considered to meet the definition of a related condition because it mostly relates to deficits with social issues and obsessive behaviors. Ms. ██████████ explained that related conditions meeting program eligibility are those found to be of the severity that the individual would be eligible for nursing home type care. Asperger's is not associated with mental retardation or have the type of deficit found to fulfill the diagnostic requirement for program eligibility.

If an applicant is found to meet the diagnostic criteria for Program eligibility, the functionality criteria must also be met. Although the Appellant did not meet the diagnostic criteria, Ms. ██████████ pointed out that the submitted clinical documentation failed to confirm the Appellant demonstrates substantial adaptive deficits in three (3) of the six (6) major life areas. A review of the evidence submitted showed that the Appellant only demonstrates a substantial deficit in the major life area of learning. No additional major life area deficits can be given.

A review of the clinical evidence submitted in this case confirms the Appellant has not been diagnosed with mental retardation or a severe and chronic related condition. Additionally, the Appellant did not demonstrate a substantial deficit in three (3) of the six (6) major life areas. 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 Appellant 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 Appellant's application for the Title XIX I/DD Waiver Program.

**ENTERED this 9<sup>th</sup> day of September 2015.**

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**Lori Woodward, State Hearing Officer**