



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

October 27, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2690

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Janice Brown, Department Representative

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

████████████████████,

Appellant,

v.

Action Number: 15-BOR-2690

**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 9, 2015, on an appeal filed July 30, 2015.

The matter before the Hearing Officer arises from the July 22, 2015 decision by the Respondent to deny the Appellant medical eligibility for the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by ██████████. The Appellant appeared *pro se*, by her guardian ██████████. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of denial, dated July 22, 2015
- D-2 Independent Psychological Evaluation (IPE) of Appellant, dated June 17, 2015
- D-3 Individualized Education Program (IEP) for Appellant, dated May 12, 2015
- D-4 Notice of denial for Psychiatric Residential Treatment Program, dated April 28, 2015
- D-5 Letter from ██████████, dated May 1, 2015
- D-6 Letter from ██████████, dated April 29, 2015
- D-7 Medical/clinical information regarding the Appellant from ██████████ ██████████

- D-8 Additional medical/clinical information regarding the Appellant from [REDACTED]
- D-9 Discharge summary from [REDACTED], dated May 8, 2015
- D-10 Discharge summary from [REDACTED], dated March 13, 2015
- D-11 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services (excerpt)

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 was an applicant for I/DD Waiver Program services.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination. [REDACTED], a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 3) The Respondent denied the Appellant’s application based on unmet medical eligibility and issued a notice (Exhibit D-1) dated July 22, 2015, advising the Appellant of the basis for denial as, “Documentation submitted does not support the presence of an eligible diagnosis for the I/DD Waiver program...Individuals whose primary condition is serious mental illness are specifically excluded from participation in the I/DD Waiver program.”
- 4) The Appellant’s primary condition is serious mental illness.

APPLICABLE POLICY

The policy regarding the diagnostic component of medical eligibility for the I/DD Waiver Program is located in Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, at §513.3.2.1. This policy requires a diagnosis of mental retardation or a related condition, and specifically excludes mental illness diagnoses from the list of related conditions.

DISCUSSION

The Respondent denied the Appellant’s application for the I/DD Waiver Program based on unmet medical eligibility. The unmet medical eligibility component noted on the denial notice was diagnostic. Expert testimony confirmed the Appellant’s primary condition is mental illness.

Testimony on the Appellant's behalf did not dispute this, but rather addressed the issues and needs of the Appellant that stem from her mental illness. Program policy specifically excludes individuals whose primary condition is mental illness. The Board of Review is unable to change policy or make policy exceptions. The decision of the Respondent to deny the Appellant's application for the I/DD Waiver Program was correct.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires an eligible diagnosis. Because the primary condition for the Appellant is mental illness, the diagnostic component could not be established.
- 2) Because the diagnostic component could not be established, medical eligibility as a whole could not be established and the Respondent must deny the Appellant's application for the I/DD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's denial of Appellant's application for services under the I/DD Waiver Program.

ENTERED this ____ Day of October 2015.

**Todd Thornton
State Hearing Officer**