



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 30, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2705

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,

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-2705

**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 7, 2015, on an appeal filed August 3, 2015.

The matter before the Hearing Officer arises from the July 24, 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 mother and guardian ██████████. Appearing a witness for the Appellant was ██████████. ██████████ observed the hearing but did not participate. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of denial, dated July 24, 2015
- D-2 Independent Psychological Evaluation (IPE) of Appellant, evaluation date June 18, 2015
- D-3 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) Mr. [REDACTED] reviewed the Appellant's IPE (Exhibit D-2). As a result of this review, the Respondent denied the Appellant's application based on unmet medical eligibility and issued a notice (Exhibit D-1) dated July 24, 2015, advising the Appellant of the basis for denial as, "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility."
- 4) The notice indicates the Appellant did not demonstrate substantial limitations in any of the six major life areas.
- 5) The Appellant's IPE includes her results on the Adaptive Behavior Assessment System – Second Edition (ABAS-II), a test instrument used to measure adaptive behavior. Standard scores of one (1) or two (2) on this instrument demonstrate substantial limitations in the corresponding major life area. The Appellant received no eligible scores on the ABAS-II.

APPLICABLE POLICY

The policy regarding the functionality 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 §513.3.2.2. This policy reads as follows:

513.3.2.2 Functionality

The applicant must have substantial deficits in at least 3 of the 6 identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,
- Capacity for independent living which includes the following 6 sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, 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 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.

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 functionality. The policy regarding functionality relies on the concept of "substantial deficits," and defines this concept strictly in terms of test scores "derived from a standardized measure of adaptive behavior," and the Appellant did not establish eligibility on this basis. Narrative descriptions in evidence or testimony may not substitute for lacking eligible test scores; they can only support existing eligible results. Testimony and evidence on the Appellant's behalf neither questioned the validity of those results nor provided an alternative that demonstrated eligibility. 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 the demonstration of substantial deficits in at least three major life areas (also identified by policy). Because the Appellant did not demonstrate substantial deficits in any major life areas, the functionality component could not be established.
- 2) Because the functionality 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**