



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

February 25, 2016



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-1219

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-1219**

**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 February 24, 2016, on an appeal filed February 2, 2016.

The matter before the Hearing Officer arises from the January 8, 2016, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver program.

At the hearing, the Respondent appeared by ██████████, consulting psychologist for the Bureau of Medical Services. The Appellant appeared by his mother, ██████████. Appearing as a witness for the Appellant was ██████████ with KVC Behavioral Healthcare. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 West Virginia Medicaid Provider Manual §513.3
- D-2 Notice of Denial dated January 8, 2016
- D-3 Independent Psychological Evaluation dated December 8, 2015
- D-4 Screening by Psychologist Progress Note dated May 1, 2014
- D-5 Section 504 Student Checklist dated November 7, 2013
- D-6 Section 504 Eligibility Committee Report and Accommodation Plan dated November 7, 2013
- D-7 Occupational Therapy Evaluation dated April 19, 2007
- D-8 Speech-Language Evaluation Report dated May 22, 2007

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 applied for services under the I/DD Waiver program. The Department issued a Notice of Denial (D-2) on January 8, 2016, advising that the Appellant's application was denied as the medical criteria for the program had not been met.
- 2) The Appellant was diagnosed in 2014 (D-3) with Asperger's Disorder, Major Depressive Disorder, Attention Deficit Hyperactivity Disorder (ADHD), and Oppositional Defiant Disorder.
- 3) As part of the eligibility determination process, the Appellant underwent an Independent Psychological Evaluation (D-3) in December 2015. The Wechsler Intelligence Scale for Children (WISC-5) was administered during the evaluation. The Appellant was determined to have a full scale Intelligence Quotient (IQ) of 78.
- 4) The Wide Range Achievement Test (WRAT-4) was administered during the Appellant's psychological evaluation (D-3) in December 2015. The Appellant had scores ranging from 85-111 in the academic areas tested.
- 5) The Childhood Autism Rating Scale (CARS-2) that was administered (D-3) to the Appellant supported his previous diagnosis of an autism spectrum disorder, with a score of 28, which falls into the mild to moderate range.

### **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.

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.

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 Department's expert witness contended that the Appellant did not meet the diagnostic criteria required for the program. The Appellant's diagnosis of Asperger's Syndrome, or autistic spectrum disorder, is excluded from eligibility as the disorder does not meet the severity criteria required for program participation. This is evidenced by the Appellant's CARS-2 score of 28, which indicates that her autism disorder is considered mild to moderate. A CARS-2 score of 37 or higher would possibly meet the severity criteria.

According to the intelligence tests administered during the Independent Psychological Evaluation, the Appellant did not have an eligible diagnosis of intellectual disability or was exhibit substantial deficits in intellectual functioning. Eligible scores for the WISC-5 and WRAT-4 are 55 or below (3 standard deviations below the mean of 100), in which the Appellant had higher scores. Therefore, the Appellant was not demonstrating an intellectual disability to qualify for program eligibility.

### **CONCLUSION OF LAW**

Whereas the documentation submitted failed to establish that the Appellant met the diagnostic criteria required by policy for the I/DD Waiver program, medical eligibility was not met.

**DECISION**

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

**ENTERED this 25<sup>th</sup> day of February 2016**

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**Kristi Logan  
State Hearing Officer**