



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St., Suite 307
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 31, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1416

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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: BMS - Pat Nisbet / Teresa McDonough

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1416

**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 March 31, 2016, on an appeal filed March 2, 2016.

The matter before the Hearing Officer arises from the January 15, 2016 decision by the Respondent to deny Appellant's application for benefits and services provided through the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by ██████████, a psychologist consultant to the WVDHHR's, Bureau for Medical Services. The Appellant was represented by her sister, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Manual, Chapter 513 – *Covered Services, Limitations, and Exclusions for I/DD Waiver Services*, §513.6, Applicant Eligibility and Enrollment Process
- D-2 Notice of denial dated 1/15/16
- D-3 Independent Psychological Evaluation (IPE) completed on 12/3/15

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 or about January 15, 2016, Appellant was notified that her application for benefits and services through the Medicaid I/DD Waiver Program was denied. This notice indicates - “No documentation which supports the presence of intellectual disability with concurrent substantial adaptive deficits prior to the age of 22 was submitted to the independent psychologist for review.”
- 2) Respondent, represented by [REDACTED], a psychologist consultant contracted by the Bureau for Medical Services (BMS), reviewed the I/DD Waiver Policy and proffered testimony specific to the medical eligibility determination completed on the Appellant. As a matter of record, Respondent cited Exhibit D-3 and noted that while the Independent Psychological Evaluation (IPE) includes anecdotal reports that the Appellant was “slow” when she attended public school and that she previously suffered from a seizure disorder, there was no documentation provided (medical records, previous evaluations, school records, etc...) to demonstrate that the 63-year-old Appellant was diagnosed with an Intellectual Disability, with concurrent substantial adaptive deficits, prior to the age of 22 years. While the IPE notes a report that the Appellant’s academic curriculum was modified in the small rural public school she attended, it was also reported that she graduated with a regular high school diploma.
- 3) Appellant’s representative did not dispute the clinical documentation relied upon by Respondent, and indicated that the Appellant’s previous records were not available to her. Appellant’s representative indicated that her sister’s functional ability has declined with age and that she was encouraged to apply for the IDD Waiver Program so that she could receive additional services through [REDACTED] Inc. – her current service provider. Appellant’s representative further indicated that she is also concerned about Appellant’s care in the event she would be unable to provide assistance.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.6.2.1, provides that the applicant must have a diagnosis of intellectual disability (formerly identified as Mental Retardation) with concurrent substantial deficits manifested prior to the age of 22, or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. Among the diagnoses considered to be related are: Autism, traumatic brain injury, cerebral palsy, spina bifida and any condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires services similar to those required for persons with intellectual disability.

DISCUSSION

In order to establish medical eligibility for participation in the Medicaid I/DD Waiver Program, the applicant must have a diagnosis of intellectual disability, or a related condition, with concurrent substantial adaptive deficits manifested prior to the age of 22. While the anecdotal information provided during the evaluation indicates the Appellant has historically demonstrated some level of intellectual delay, there is no documented evidence to confirm when she was diagnosed with an intellectual disability, or if she was demonstrating substantial adaptive deficits in the major life areas. As a result, medical eligibility for participation in the I/DD Waiver Program cannot be established.

CONCLUSION OF LAW

The Appellant does not meet the diagnostic criteria necessary to establish medical eligibility 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 ____ Day of March 2016.

**Thomas E. Arnett
State Hearing Officer**