



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 27, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1621

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, BMS, WVDHHR

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

████████████████████,

Appellant,

v.

Action Number: 16-BOR-1621

**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 May 18, 2016, on an appeal filed April 4, 2016.

The matter before the Hearing Officer arises from the March 29, 2016 decision by the Respondent to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by ██████████, Long-Term Care Clinical Consultant, ██████████. The Appellant was represented by his grandmother/custodian, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Services Manual Chapter 513.3
- D-2 Notice of Decision dated March 29, 2016
- D-3 Independent Psychological Evaluation dated February 5, 2016
- D-4 Notice of Decision dated January 7, 2016
- D-5 Speech-Language Evaluation dated December 17, 2015
- D-6 Occupational Therapy Evaluation and Plan of Treatment dated November 9, 2015
- D-7 Independent Psychological Evaluation dated December 23, 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 March 29, 2016, the Appellant was notified (D-2) that his application for the I/DD Waiver Medicaid Program was denied because his condition does not meet the required medical criteria for the program.
- 2) ██████████, Long-Term Care Clinical Consultant with ██████████/Bureau for Medical Services, testified that the Appellant has a potentially eligible diagnosis for the program – severe autism – however, he does not exhibit substantial delays in three (3) of the six (6) major life areas identified for I/DD Waiver eligibility.
- 3) The Department stipulated that the Appellant – who is currently three (3) years old - is exhibiting substantial delays in the major life areas of *learning* and *receptive or expressive language*. However, relevant test scores did not reveal the presence of substantial delays in *self-care, self-direction, mobility* and *capacity for independent living*.

In order to qualify for the program, Ms. ██████████ testified that applicants must have a score of one (1) or two (2) on the Adaptive Behavior Assessment System (ABAS) III, based on information provided by the parent/caregiver. The Appellant received ineligible scores of six (6) in *self-care*; four (4) in *self-direction*; and nine (9) in motor skills (*mobility*). An individual must have eligible scores in at least three (3) of six (6) sub-domains of *capacity for independent living* in order to be determined substantially deficient in that functional area. The Appellant achieved scores of five (5) in home living; six (6) in health and safety; and four (4) in leisure. He received eligible scores in the areas of community use and social only. The ABAS III did not consider the area of employment as the Appellant is a child.

- 4) The Appellant’s grandmother, ██████████, testified that she believes the Appellant is also substantially deficient in the functional areas of *self-care, self-direction* and *capacity for independent living*. She stated that her grandson is not a normal three-year-old, and that he cannot perform self-care tasks, has no self-direction and will never live independently unless he learns to speak.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513.6.2.2 - An individual who applies for I/DD Waiver services must have substantial adaptive deficits in three (3) out of six (6) identified major life areas - *self-care, receptive or expressive language, learning, mobility, self-direction* and *capacity for independent living*. *Capacity for independent living* includes six sub-domains: home living, social skills, employment, health and safety, community, and leisure activities.

Substantial deficits are defined as standardized scores of three (3) standard deviations below the mean or less than one (1) 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 (I/DD) normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. 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.

DISCUSSION

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. While the Appellant has a potentially eligible diagnosis for the program, documentation fails to confirm that he is demonstrating substantial adaptive deficits in three (3) of the six (6) major life areas identified for Waiver eligibility.

The Appellant was awarded deficits in *learning* and *receptive or expressive language*; however, relevant test scores do not reflect deficits in the other major life areas.

Based on information provided during the hearing, medical eligibility for participation in the I/DD Waiver Program has not been established.

CONCLUSIONS OF LAW

The Respondent's decision to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program is affirmed.

DECISION

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

ENTERED this 27th Day of May 2016.

**Pamela L. Hinzman
State Hearing Officer**