



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 23, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1696

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,

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

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

cc: Taunia Hardy, BM

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

██████████,

Appellant,

v.

Action Number: 16-BOR-1696

**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 13, 2016.

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

At the hearing, the Respondent appeared by ██████████, a psychologist consultant to the WVDHHR, Bureau for Medical Services. The Appellant was represented by ██████████, an Adult Protective Services Worker (APSW) employed by the WVDHHR. 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*, §513.3.2, Initial Medical Eligibility
- D-2 Notice of denial dated 2/15/16
- D-3 Independent Psychological Evaluation (IPE) completed on 1/8/16
- D-4 Notice of denial dated 11/18/15
- D-6 ██████████ Admission Summary/Care Plan dated 5/28/15
- D-9 ██████████ County Schools Report of Psychological Evaluation dated 12/17/07

*Exhibits D-5, D-7 and D-8 were not admitted into evidence.

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) Appellant was notified on November 18, 2015 (D-4), that her application for Medicaid I/DD Waiver Services was denied due to an unfavorable medical eligibility determination. A second medical eligibility determination was subsequently pursued.
- 2) On February 15, 2016, Appellant was again notified (Exhibit D-2) that her application for benefits and services through the Medicaid I/DD Waiver Program was denied. This notice indicates that the documentation submitted does not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for Waiver eligibility. It should be noted that deficits were not identified in any of the six (6) major life areas (self-care, receptive or expressive language, learning, mobility, self-direction, or capacity for independent living).
- 3) As a matter of record, Respondent acknowledged the Appellant has a potentially eligible diagnosis of Mild Intellectual Disability. However, Respondent contended that the clinical documentation submitted for review fails to demonstrate that the Appellant meets the functionality criteria – substantial adaptive deficits in at least three (3) of the six (6) major life areas.
- 4) Appellant’s representative contended that Appellant has demonstrated inconsistencies throughout several evaluations, and for that reason, she believes the Appellant deserves to receive I/DD Waiver services. In addition, the Appellant recently developed Tardive Dyskinesia, a condition caused by taking psychotropic medications, and this condition as has adversely affected her ability to ambulate and manage her self-care.
- 5) Policy defines a substantial adaptive deficit as a standardized score of three (3) deviations below the mean, or less than one (1) percentile. The Adaptive Behavior Assessment System, Third Addition (ABAS-3), administered to the Appellant has a mean, or average score, of ten (10). An eligible score - 3 standard deviations below the mean of 10, or less than 1 percentile, is a scaled score of 1 or 2.
- 6) Respondent’s representative noted that neither the narrative information included in the Independent Psychological Evaluation (IPE), nor the psychometric data resulting from the ABAS-3, identified any substantial adaptive deficits in the major life areas. The Appellant’s recent development of Tardive Dyskinesia was not known at the time of the evaluation and the severity of Appellant’s condition can only be determined by new/additional testing.

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.

Diagnosis

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 may, 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.

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

In order to establish medical eligibility for participation in the Medicaid I/DD Waiver Program, an individual must meet the diagnostic, functionality and need for active treatment criteria. While the Appellant met the diagnostic criteria, functionality criteria is only met when clinical documentation confirms the individual is demonstrating substantial adaptive deficits in three (3) of the six (6) major life areas. Policy defines a substantial adaptive deficit as a standardized score of three (3) deviations below the mean, or less than one (1) percentile. The ABAS-III administered to the Appellant has a mean, or average score, of ten (10). An eligible score of 3 standard deviations below the mean of 10, or less than 1 percentile, is a score of 1 or 2. Pursuant to policy, the presence of substantial adaptive deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review.

Respondent's representative noted that while the accuracy of the ABAS-3 results was questionable, and that Appellant's recent onset of Tardive Dyskinesia was not known at the time of the most recent evaluation, the clinical evidence submitted at the hearing fails to identify any 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 evidence submitted at the hearing fails to demonstrate that Appellant meets the medical eligibility criteria required 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 May 2016.

Thomas E. Arnett
State Hearing Officer