



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

June 16, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1868

Dear Mr. and Mrs. [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,

Lori Woodward
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-1868

**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 June 15, 2016, on an appeal filed May 6, 2016.

The matter before the Hearing Officer arises from the April 27, 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 psychological consultant to the West Virginia Department of Health and Human Resources (WV DHHR), Bureau for Medical Services (BMS). The Appellant appeared by her mother and father, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Denial, dated April 27, 2016
- D-2 I/DD Waiver Manual, §§513.6.1.1, 513.6.2, 513.6.21, 513.6.2.2, 513.6.2.3
- D-3 Psychoeducational Evaluation, dated March 3, 2016
- D-4 Independent Psychological Evaluation (IPE) completed on April 25, 2016
- D-5 Letter dated January 16, 2013 from Dr. ██████████, ██████████
- D-6 ██████████ County Schools Individualized Education Program (IEP), dated March 14, 2016

Appellant's Exhibits:

None

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 is a five year-old girl with a diagnosis of severe Autism.
- 2) On April 27, 2016, the Appellant's parents were notified that the Appellant's application for benefits and services through the Medicaid I/DD Waiver Program (Program) was denied. This notice indicates that the documentation submitted did not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas for program eligibility. (Exhibit D-1)
- 3) The Respondent stipulated to the Appellant meeting the medical diagnosis criteria for eligibility and that she met two substantial major life area deficits of Language and Learning. (Exhibit D-1)
- 4) As part of the application process, the Appellant underwent an Independent Psychological Evaluation (IPE) on April 25, 2016. (Exhibit D-4)
- 5) The narrative and test scores on the Appellant's 2016 IPE did not indicate any substantial deficits for program eligibility in the area of adaptive behaviors except in the areas of Language and Learning. (Exhibit D-4)

APPLICABLE POLICY

WV Medicaid Provider Manual §513.6.1.1, Initial Eligibility Determination Process, explains that the initial eligibility determination process involves the use of an IPE which includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is used in making a medical eligibility determination for the Program.

WV Medicaid Provider Manual §513.6.2, Initial Medical Eligibility, states that to be medically eligible, the applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the Independent Psychologists (IP) and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. Evaluations of the applicant must demonstrate: 1) a need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and 2) a need for the same level of care and services that is provided in an ICF/IID. In order to be eligible to receive Program services, an applicant must meet the medical eligibility criteria in each of the following

categories: 1) diagnosis; 2) functionality; 3) need for active treatment; 4) and requirement of ICF/IID level of care.

WV Medicaid Provider Manual §513.6.2.1, Diagnosis, requires that the applicant have a diagnosis of intellectual disability 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. Additionally, applicants who have a diagnosis of intellectual disability or a severe related condition with associated concurrent adaptive deficits must meet the following requirements: 1) likely to continue indefinitely; and 2) must have the presence of at least three substantial deficits out of the six identified major life areas listed in Section 513.6.2.2, Functionality.

WV Medicaid Provider Manual §513.6.2.2, Functionality, instructs that the applicant must have substantial deficits in at least three of the six identified major life areas:

- Self-Care;
- Receptive or Expressive Language (communication);
- Learning (functional academics);
- Mobility; Self-direction; and,
- Capacity for Independent Living which includes the six (6) sub-domains of home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three (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 three 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 75th percentile when derived from intellectually disabled normative populations when intellectual disability 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, need for active treatment, and requirement of ICF/IID level of care criteria. A program applicant must meet all four criteria for Program eligibility.

██████████ (Ms. ██████████), the Respondent's witness, testified that she is a licensed psychologist in the state of West Virginia, and that her office, ██████████ ██████████ (██████████), is a contracted agency with the WV DHHR, responsible for medical

eligibility determinations for the Title XIX I/DD Waiver Program. In this capacity, Ms. [REDACTED] reviewed the application of the Appellant.

The Independent Psychological Evaluation (IPE) which the Appellant underwent on April 25, 2016 as part of the application process was administered by an Independent Psychologist, [REDACTED], M.A., and was reviewed by Ms. [REDACTED]. Mr. [REDACTED] was unable to successfully administer any intellectual/cognitive testing to evaluate the Appellant's intellectual functioning due to her lack of cooperation in the administration of the attempted assessment devices. However, it was noted that the Appellant was diagnosed with severe Autism in 2013. (Exhibit D-3) Ms. [REDACTED] stipulated to the Appellant meeting the medical diagnosis criteria for program eligibility.

However, in reviewing the Adaptive Behavior Assessment System-Second Edition (ABAS-II) and the corresponding narrative in the IPE, Ms. [REDACTED] found the Appellant had only two substantial deficits out of the possible six major life areas identified for Program eligibility. Policy defines a substantial adaptive deficit as standardized test scores of 3 standard deviations below the mean, or less than one percentile. The presence of substantial adaptive deficits must be supported not only by relevant test scores, but also by narrative descriptions submitted for review. The Appellant was found to be functioning at less than one percentile in the areas of Language and Learning as determined by the ABAS-II. Additionally, the Appellant was found to be functioning in less than one percentile in two out of the six sub-domains under Capacity for Independent Living in the areas of Leisure and Social.

The Appellant's parents asserted that the Appellant should have been awarded a deficit in the areas of self-care and self-direction, and an additional deficit in the subdomain of health and safety under Capacity for Independent Living.

The Appellant's parents indicated that she completed tasks because of her need to have certain tasks completed. If these tasks, such as putting away silverware, are not completed, then the Appellant has a "meltdown" or temper tantrum. The Appellant scored a 4 on the ABAS-II for self-direction noting that she is unable to start/finish tasks, choose activities, control her frustration or participate in any activity independently. The score of 4 on the ABAS-II indicates borderline functioning; however, does not meet the policy definition of a substantial deficit.

Regarding self-care, the Appellant's father testified that although the IPE's narrative indicates that the Appellant is able to bathe, brush her teeth, and dress by herself, the Appellant is simply just mimicking the act of bathing and brushing her teeth. He proffers that the Appellant does not comprehend what she is actually doing. He cites as examples the Appellant chewing on her toothbrush as her idea of brushing her teeth, and running the loofa brush across her chest for the act of bathing. It is noted that the Appellant scored a 7, below average, on the ABAS-II in the area of self-care. Additionally, the IEP evaluation performed on March 14, 2016 (Exhibit D-6, page 5 of 13), supports the IPE by noting that the Appellant is able to get her coat on and off and button it on her own, is able to use the bathroom on her own, and is able to guide a teacher to a desired object.

Both parents stated that the Appellant is not able to understand “being safe” and will often leave the house on her own and “wander” around without regard to safety. The parents are concerned because she has no “social skills” to know what is or is not a safe situation. The Appellant scored a 4 in the area of health and safety on the ABAS-II with the narrative noting that she is completely dependent on her care providers to meet these needs. Again, this indicates borderline functioning; it is not considered a substantial deficit as defined by policy.

No additional major life area deficits were identified based on the evidence presented at the hearing. The IPE test scores, narratives, and other documentation support the Respondent’s decision that the Appellant did not meet the functionality policy criteria necessary for Program eligibility and thus deny her application.

CONCLUSIONS OF LAW

- 1) The documentation submitted failed to establish that the Appellant demonstrated at least three substantial adaptive deficits in the six major life areas. Standardized test scores identified a substantial adaptive deficit in the areas of Language and Learning.
- 2) The Appellant does not meet the functionality criteria based on the documentation submitted for I/DD Waiver program eligibility.

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 16th day of June 2016.

Lori Woodward, State Hearing Officer