



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

Esta es la decision de su Audiencia Imparcial. La decision del Departamento ha sido confirmada/invertido/remitido. Si usted tiene preguntas, por favor llame a Phillip Owens, 304-267-0100, ext. 71054

July 21, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR, ACTION NO.: 16-BOR-2014

Dear [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-2014

**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 July 20, 2016, on an appeal filed June 1, 2016.

The matter before the Hearing Officer arises from the May 6, 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 ██████████, 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, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 BMS Provider Manual (12/1/2015), Chapter 513 Intellectual and Developmental Disabilities Waiver (IDDW), §513.6, et seq. (excerpts)
- D-2 Notice of Denial, dated May 6, 2016
- D-3 Independent Psychological Evaluation (IPE), evaluation date April 11, 2016
- D-4 ██████████, dated January 28, 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) Appellant was notified on May 6, 2016 that her application for Medicaid I/DD Waiver program services was denied due to not having an eligible diagnosis of either intellectual disability or severe related condition requiring an institutional level of care. (Exhibit D-2)
- 2) As part of the application process, the Appellant underwent an Independent Psychological Evaluation (IPE) on April 11, 2016. (Exhibit D-3)
- 3) The Appellant was diagnosed with Other Disorder of Development (F88) based upon a history of diagnoses including speech delay, developmental delay, gross motor delay, and torticollis. (Exhibit D-3)
- 4) The Slosson Intelligence Test which measures intellectual/cognitive ability showed that the Appellant had an Intelligence Quotient (IQ) of 97, which equates to a mid-range of intellectual ability.
- 5) The Adaptive Behavior Assessment System-II (ABAS-II) measuring adaptive behavior requires scaled scores of 1 or 2 as eligible scores that are below one percentile to be considered as a substantial deficit per policy. (Exhibit D-1) Many of the Appellant's scores on this test were in the average range and consistent with the IPE narrative. The lowest scaled score of 3 was in self-care.
- 6) The Developmental Profile-3 which requires scores of 55 or below to be considered as a substantial deficit per policy was used to test the Appellant's development. All of the areas in this test were above 55. (Exhibit D-3)
- 7) The [REDACTED] dated January 28, 2016 correlates with the findings of the Appellant's 2016 IPE. (Exhibit D-4)
- 8) The narrative and test scores on the Appellant's 2016 IPE did not indicate any program eligible diagnosis or severe related condition requiring an institutional level of care. (Exhibit D-3)

APPLICABLE POLICY

WV Medicaid Provider Manual, Chapter 513, §513.6.1.1, Initial Eligibility Determination Process, explains that the initial eligibility determination process involves the use of an IPE (Independent Psychological Evaluation) 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, Chapter 513, §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 (Intermediate Care Facility for Individuals with Intellectual Disabilities) 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, Chapter 513, §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, Chapter 513m §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

The Appellant was notified on May 6, 2016 that her application for Medicaid I/DD Waiver program services was denied due to not having an eligible diagnosis of either intellectual disability or severe related condition requiring an institutional level of care.

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.

██████████, 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. ██████████ reviewed the Appellant's application. After reviewing the Appellant's application, Ms. ██████████ found that the Appellant did not have a diagnosis of intellectual disability or other related condition to meet medical eligibility for the IDD Waiver Program.

In making that determination, Ms. ██████████ reviewed the Independent Psychological Evaluation (IPE) which the Appellant underwent on April 11, 2016 as part of the application process which was administered by an independent licensed psychologist, ██████████, M.S., L.P.C. Ms. ██████████ diagnosed the Appellant with Other Disorder of Development (F88) based upon a history of diagnoses including speech delay, developmental delay, gross motor delay, and torticollis, which are not considered as eligible diagnoses to establish program eligibility. Additionally, Ms. ██████████ reviewed the Slosson Intelligence Test which measures intellectual/cognitive ability administered by Ms. ██████████ which showed that the Appellant had an Intelligence Quotient (IQ) of 97, equating to a mid-range of intellectual ability.

Ms. ██████████ also examined the Appellant's functionality assessment to assure correlation with Ms. ██████████ findings. The Adaptive Behavior Assessment System-II (ABAS-II) measuring adaptive behavior requires scaled scores of 1 or 2 as eligible scores that are below one percentile to be considered as a substantial deficit defined by policy. Many of the Appellant's scores on this test were in the average range and consistent with the IPE narrative. The lowest scaled score of 3 was in self-care. The Developmental Profile-3 assessment was also considered by Ms. ██████████. This test requires scores of 55 or below to be considered as a substantial deficit. Ms. ██████████ found that all of the areas in this test were above 55. Ms. ██████████ found that the tests administered by Ms. ██████████ did not show that the Appellant met any substantial deficits as defined by policy, and were supported by Ms. ██████████ narrative and correlated with the January 2016 ██████████ evaluation submitted with the application.

The Appellant's mother testified that the Appellant does not talk at all and has had some behavioral issues since April. She stated that the Appellant is scheduled to undergo additional

genetic testing in September for a second opinion as to possible Autism or Fetal Alcohol Syndrome diagnosis.

The narrative and test scores on the Appellant's 2016 IPE and other documentation submitted for IDD Waiver Program application did not indicate any program eligible diagnosis or severe related condition requiring an institutional level of care.

CONCLUSION OF LAW

The documentation submitted failed to establish that the Appellant has a medical eligible diagnosis of either intellectual disability or severe related condition requiring institutionalized level of care.

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 21st day of July 2016.

Lori Woodward, State Hearing Officer