



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

November 3, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2388

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Kimberly Stitzinger, Assistant Attorney General

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

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-2388**

**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 November 2, 2016, on an appeal filed July 29, 2016.

The matter before the Hearing Officer arises from the April 26, 2016 decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kimberly Stitzinger, Assistant Attorney General. Appearing as a witness for the Respondent was Linda Workman, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by counsel, ██████████. Appearing as a witness for the Appellant was ██████████, the Appellant's father. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Independent Psychological Evaluation dated March 19, 2016
- D-3 Notice of Denial dated April 26, 2016

**Appellant's Exhibits:**

- A-1 Medical Records from WVU Healthcare dated May 3, 2015, and Molecular Diagnostics Report dated December 31, 2014
- A-2 Renal and Bladder Sonography Report dated December 29, 2014
- A-3 Medications List from ██████████ dated July 26, 2016

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 applied for services under the I/DD Waiver Program.
- 2) As part of the application process, the Appellant underwent (D-2) an Independent Psychological Evaluation (IPE) on March 19, 2016.
- 3) The Appellant was diagnosed with Persistent Depressive Disorder and Other Specified Anxiety Disorder. The Appellant was previously diagnosed with congenital blindness.
- 4) The Respondent notified (D-3) the Appellant on April 26, 2016, that her application for I/DD Waiver services had been denied as she did not have a diagnosis of Intellectual Disability or related condition, further stating that congenital blindness is not a related condition.
- 5) Counsel for the Appellant contended that the Appellant has an eligible diagnosis of moderate Intellectual Disability and is exhibiting substantial adaptive deficits in the major life areas of self-care, learning and capacity for independent living.

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §513.6.2 states that in order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality, need for active treatment, and requirement of ICF/IID Level of Care criteria.

#### **Diagnosis**

The applicant must 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.

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 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.

Additionally, the applicant who has a diagnosis of intellectual disability 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 three substantial deficits out of the six identified major life areas listed in Section 513.6.2.2.

### **Functionality**

The applicant must have substantial deficits in at least three of the six 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 six sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three 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 75<sup>th</sup> 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**

To be considered for medical eligibility for I/DD Waiver services, an individual must meet the diagnostic criteria with a diagnosis of Intellectual Disability or related condition which constitutes a severe and chronic disability with concurrent substantial deficits that manifested prior to age 22. The Appellant's application was denied because she did not have a diagnosis of Intellectual Disability or other qualifying condition.

The Appellant's representative submitted a Neuropsychological Assessment conducted on August 29, 2016, for the Appellant. The assessing neuropsychologist diagnosed the Appellant with moderate Intellectual Disability.

The expert witness for the Respondent disputed the diagnosis of moderate Intellectual Disability based on previous intelligence testing of the Appellant and the lack of psychometric data used to make this determination.

Due to the Appellant's blindness, only verbal portions of intelligence and achievement tests can be administered to the Appellant, making a full-scale Intelligence Quotient (IQ) score unavailable. However, based on previous testing administered to the Appellant, a diagnosis of moderate Intellectual Disability is unfounded.

In December 2011, the Appellant was administered the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), and scored a Verbal Comprehension Index of 85 and a Working Memory Index of 86. The Woodcock Johnson II Test of Achievement Braille Adaptation (WJ-III) administered resulted in scores of 88 in Reading Ability, a 98 in Basic Writing Skills and "below 40" in Brief Math.

In February 2015, the Appellant was administered the WAIS-IV, yielding scores of 86 in Working Memory Index and 85 in Verbal Comprehension Index. The Wide Range Adult Achievement Test, Fourth Edition (WRAT-IV) that was administered resulted in scores of 89 in Sentence Comprehension, 85 in Spelling and 64 in Math Computation.

The Appellant took the WAIS-4 again during the March 2016 Independent Psychological Evaluation that was submitted with her I/DD Waiver application. The Appellant scored a Verbal Comprehension Index of 70 and a Working Memory Index of 69.

The mean, or average score, of these intelligence and achievement tests is 100. Pursuant to policy, a substantial deficit is defined as three standard deviations below the mean. Three standard deviations below the mean of 100 is a score of 55 or below. Apart from one area tested in December 2011 on the WJ-III achievement test, the Appellant did not demonstrate eligible scores.

Policy provides that an eligible diagnosis of Intellectual Disability or related condition must be present prior to the age of 22. The Appellant was 22 years old when the Neuropsychological Evaluation was conducted in August 2016. The Appellant did not receive a diagnosis of Intellectual Disability or related condition prior to age 22, therefore she did not meet the diagnostic criteria for medical eligibility for the I/DD Waiver Program.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, an individual must first meet the diagnostic criteria of a diagnosis of Intellectual Disability or related condition that manifested prior to age 22.
- 2) The Appellant received a diagnosis of moderate Intellectual Disability at 22 years of age.

- 3) Furthermore, historical intellectual and achievement tests administered to the Appellant did not support a diagnosis of Intellectual Disability, and a diagnosis of moderate Intellectual Disability - given at age 22 without supporting psychometric data - cannot be accepted.
- 4) The Appellant failed to meet the medical criteria required for services under the I/DD Waiver Program.

**DECISION**

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

**ENTERED this 3<sup>rd</sup> day of November 2016**

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**Kristi Logan  
State Hearing Officer**