



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 28, 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2416

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Janice Brown, APS Healthcare
Pat Nisbet, BMS

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2416

**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 September 14, 2016, on an appeal filed August 2, 2016.

The matter before the Hearing Officer arises from the July 21, 2016 decision by the Respondent to terminate the Appellant's benefits and services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by ██████████ MA, Psychological Consultation & Assessment, Inc. The Appellant appeared and was represented by his mother, ██████████. Appearing as witnesses for the Appellant were ██████████ with West Virginia Advocates, ██████████ with ██████████, and ██████████ with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

*Present but not participating in the hearing was Sarah Clendenin, Hearings Coordinator for PC&A. Ms. Clendenin was present to take notes for Ms. ██████████. The Appellant's representative had no objections to her presence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, §§ 513.6.2, 513.6.2.1, 513.6.2.2 and 513.7.1.
- D-2 Notice of Termination, dated July 21, 2016
- D-3 Independent Psychological Evaluation (IPE), evaluation date June 30, 2016

- D-4 Notice of Termination, dated April 26, 2016
D-5 Inventory for Client and Agency Planning (ICAP), evaluation date April 5, 2016

Appellant's Exhibits:

- A-1 I/DD Waiver Individual Habilitation Plan and Task Analysis, established June 2015 through July 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 was a recipient of the I/DD Waiver Program services.
- 2) On April 5, 2016, the Appellant was evaluated for re-determination of medical eligibility for the I/DD Waiver Program. (D-5)
- 3) As a result of the April 5, 2016 evaluation, the Appellant was determined to meet the medical eligibility diagnostic requirement, having been assessed with an eligible diagnosis of mental retardation, but was denied continued I/DD Waiver services because he did not meet the necessary functional requirements. (D-5)
- 4) The Appellant disagreed with the assessment and requested a second medical evaluation. An Independent Psychological Evaluation (IPE) was completed on June 30, 2016, which is the subject of the present appeal before the Board of Review. (D-3)
- 5) The June 30, 2016 IPE indicated that the Appellant was diagnosed with Schizoaffective Psychosis based upon a history of auditory hallucinations. (D-3)
- 6) On June 30, 2016, the Appellant was administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV) which measures intellectual/cognitive ability which showed that the Appellant's intellectual functioning is within borderline range. (D-3)
- 7) The narrative and test scores on the Appellant's June 2016 IPE did not indicate any program eligible diagnosis or severe related condition requiring an institutional level of care.
(D-3)
- 8) The Appellant previously had been diagnosed with mild mental retardation. (D-3)

- 9) On July 21, 2016, the Appellant was notified that his Medicaid I/DD Waiver Program services were terminated due to not having an eligible diagnosis of either intellectual disability or severe related condition requiring an institutional level of care. (D-2)

APPLICABLE POLICY

WV Medicaid Provider Manual, Chapter 513, §513.7, Annual Re-Determination of Eligibility Process, explains that in order for a person to be re-determined eligible, the person must continue to meet all eligibility criteria (both medical and financial) and continue to have deficits in at least three (3) of the six (6) identified major life areas.

WV Medicaid Provider Manual, Chapter 513, §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 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 513.6.2.2.

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

After the Independent Psychological Evaluation (IPE) was completed on June 30, 2016, a new notice a termination was sent to the Appellant informing him that his I/DD Waiver Program benefits were terminated due to not having an eligible diagnosis of either intellectual disability or a 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 making that determination, Ms. ██████████ reviewed the IPE which the Appellant underwent to re-determine medical eligibility which was administered by an independent licensed psychologist, ██████████. The Appellant was previously diagnosed with schizoaffective disorder and mild mental retardation on October 8, 2010, by another licensed psychologist. ██████████ diagnosed the Appellant with schizoaffective psychosis, which is not considered an eligible diagnosis to establish program eligibility. The IPE did not state whether the licensed psychologist felt the previous diagnosis of mild mental retardation was accurate, but the evaluation indicated the Appellant's academic achievement is on a first grade level, and he has below-average adaptive living skill development in most areas.

The Appellant's mother, ██████████, testified that she felt the assessment completed on April 5, 2016, was done too fast and she was unable to provide accurate responses to the assessment

questions regarding the Appellant's functionality. She also stated that the Appellant is only able to function as well as he does because of the I/DD Waiver Program, and feels he will regress without the benefits and services the program provided.

Ms. [REDACTED] stated that the I/DD Waiver Program is for participants who are unable to do the skills assessed under the functionality component. She stated the Appellant is able to do many of the skills but doesn't always do them due to mental "ups and downs", which does not qualify. Ms. [REDACTED] also reiterated that the actual cause of termination from the program is that the Appellant no longer met the diagnostic component which must first be met before the other categories are considered.

The Appellant previously was a participant in the I/DD Waiver Program based on the diagnosis of mild mental retardation, a condition which has no cure. There is nothing stated in policy to indicate that this is no longer an acceptable diagnosis, so it would be reasonable to conclude the Appellant still has this condition and would meet the diagnostic component. Because the Department did not address the Appellant's functionality after determining he did not have an eligible diagnosis, it cannot be determined if he would have met that component.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires the participant to have a diagnosis of intellectual disability that is likely to continue indefinitely. Because the Appellant was previously diagnosed with mild mental retardation, the diagnostic component was met.
- 2) Whereas the Department denied the Appellant's application solely based upon an eligible diagnosis, it is unknown if he met the component of functionality.

DECISION

It is the decision of the State Hearing Officer to **reverse** Respondent's action to terminate the Appellant's I/DD Waiver Program benefits based on not having an eligible diagnosis and **remand** the matter to the Respondent for further evaluation of functionality and need for continued treatment. Following the re-evaluation, the Respondent shall notify the Appellant of its decision, which shall include the right to a Fair Hearing.

ENTERED this 28th Day of September 2016.

**Natasha Jemerison
State Hearing Officer**