



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661
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Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

October 28, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2548

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, WV Bureau for Medical Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2548

**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 WV Department of Health and Human Resources' (WV DHHR) Common Chapters Manual. This fair hearing was convened on October 13, 2016, on an appeal filed August 23, 2016.

The matter before the Hearing Officer arises from the May 13, 2016 decision by the Respondent to deny the Appellant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by Representative Kerry Linton, psychological consultant to the WV DHHR, Bureau for Medical Services. The Appellant appeared by his Representative and mother ██████████. Appearing as a witness for the Appellant was ██████████, the Appellant's father. All participants 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*, §513.6, Applicant Eligibility and Enrollment Process
- D-2 Letter of application denial for the I/DD Waiver Program, dated May 13, 2016
- D-3 Independent Psychological Evaluation (IPE) from ██████████, evaluation date April 14, 2016
- D-4 Letter from ██████████, dated May 6, 2016

Appellant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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's mother applied for the Title XIX I/DD Waiver Program on the Appellant's behalf.
- 2) Pursuant to the Appellant's application for the I/DD Program, [REDACTED], completed an Independent Psychological Evaluation (IPE) of the Appellant on April 14, 2016 (Exhibit D-3).
- 3) Based on the results of the IPE (Exhibit D-3) and other information from the Appellant's application, the WV Department of Health and Human Resources (hereinafter referred to as the Department) determined that the Appellant was not medically eligible for the program because the "documentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe," and issued a denial letter (Exhibit D-2) on May 13, 2016.
- 4) The Appellant's representative, his mother, requested a fair hearing to protest the Department's denial of the Appellant's application.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513 - *Applicant Eligibility and Enrollment Process for I/DD Waiver Services*, §513.6.2 (Exhibit D-1), states that an individual who applies for I/DD Waiver Services must meet medical eligibility criteria in each of the three areas of diagnosis, functionality, the need for active treatment and the need for an ICF/IID Level of Care.

§513.6.2.1 reads as follows in part:

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, make an individual eligible for the [I/DD] 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 disabilities 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 disabilities.

DISCUSSION

According to the letter of denial for the I/DD program (Exhibit D-2), the Appellant's application was denied because the documentation submitted with the application did not "support the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe."

The Department's representative, the psychologist who evaluated the Appellant's I/DD Waiver program application, testified that I/DD program policy does not present an exhaustive list of other related conditions which may constitute a severe and chronic disability. However, the final item in the list of other related conditions found in §513.6.2.1 of the I/DD Waiver program manual defines an "other related condition" as "any condition, other than mental illness, found to be closely related to intellectual disabilities 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 disabilities." The Department's representative testified that the Appellant had a seizure disorder, which could be considered an "other related condition," but there was no documentation that his disorder was severe, chronic and likely to continue indefinitely.

The IPE conducted by [REDACTED] (Exhibit D-3) reports that the Appellant was diagnosed with myoclonic seizures at about age 2 years. The Diagnosis section of the IPE (Exhibit D-3, page 6) reads, "Other disorder of psychological development . . . Rule out . . . unspecified intellectual disability."

The Department's representative testified that a diagnosis of "other disorder of psychological development" means that the Appellant may have experienced some delays in meeting developmental milestones. She testified that a "rule out diagnosis" may mean that the psychologist has suspicions but not enough data to make the intellectual disability diagnosis, or that some other factor such as the young age of the evaluation subject prevents the evaluator from making a diagnosis. She stated that at the time of his IPE, the Appellant was three years and one month (37 months) old. She added that a "rule out diagnosis" is not an eligible diagnosis.

The Appellant's representative, his mother, testified that the Appellant has had myoclonic seizures since he was eight months old, but she did not have a medical diagnosis of this until he was two years old. She testified that the Appellant's neurologist, [REDACTED], told her he would have difficulties for the rest of his life. She testified that the Appellant had undergone genetic testing related to his seizure disorder, but the final results of this testing will not be

available for several months. She added that the genetic testing is important because the results of this testing may help the Appellant's medical team to pinpoint exactly which medications will be the most effective in treating his disorder.

Although it is clear from the testimony and evidence that the Appellant has diagnoses of a seizure disorder and a psychological development disorder, his application for the I/DD Waiver program did not provide documentation that these disorders are severe, chronic or likely to last indefinitely, as required by policy.

CONCLUSION OF LAW

The Appellant's application for the Title XIX I/DD Waiver Program did not meet the policy requirement stated in Chapter 513.6.2.1, that documentation must demonstrate the applicant has 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. The Department acted correctly to deny the Appellant's application for the I/DD Waiver program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Appellant's application for the Title XIX I/DD Waiver Program.

ENTERED this 28th Day of October, 2016.

Stephen M. Baisden
State Hearing Officer