



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

December 6, 2016

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

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 16-BOR-2783

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**

■■■■ A PROTECTED INDIVIDUAL

Appellant,

v.

Action Number: 16-BOR-2783

**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 ■■■■ A PROTECTED INDIVIDUAL. 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 30, 2016, on an appeal filed October 3, 2016.

The matter before the Hearing Officer arises from the September 6, 2016 decision by the Respondent to deny Appellant's application for the Title XIX I/DD Waiver Program (I/DD Waiver Program).

At the hearing, the Respondent appeared by Kerri Linton, a psychologist consultant to the WV DHHR, Bureau for Medical Services. The Appellant was present but appeared by his legal guardian, ■■■■■■■■■■ with the WV Department of Health and Human Resources (WV DHHR). All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Manual, §513.6, *et. seq.*
- D-2 Notice of Denial, dated September 6, 2016
- D-3 Independent Psychological Evaluation (IPE) completed on August 17, 2016 and ABAS-3 (Adaptive Behavior Assessment System, Third Edition)
- D-4 Psychological Evaluation by ■■■■■■■■■■ completed on July 25, 2016
- D-5 ■■■■■■■■■■ dated July 26, 2016
- D-6 ■■■■■■■■■■ Doctor's Orders, dated July 26, 2016

Appellant's Exhibits:

A-1 [REDACTED] discharge notes

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. The Respondent issued a Notice of Denial on September 6, 2016, advising that the Appellant's application was denied as the medical criteria had not been met. (Exhibit D-2)
- 2) The Appellant has an eligible diagnosis of mild intellectual disability. (Exhibit D-2)
- 3) One substantial functional deficit in the area of Functional Learning was found. (Exhibit D-2)
- 4) The Appellant does not have the degree of intellectual disability that would require an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IDD) level of care. (Exhibit D-2)
- 5) The presence of substantial adaptive deficits must be supported not only by relevant test scores, but also by the narrative descriptions contained in the documentation submitted for review.
- 6) The scores from the Appellant's Adaptive Behavioral Assessment System, Third Edition (ABAS-III) were not supported by the narrative descriptions of his adaptive behaviors in the Independent Psychological Evaluation (IPE). (Exhibit D-3)
- 7) No other substantial adaptive deficits were identified as a result of the documentation submitted with the Appellant's application. (Exhibit D-3)

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.

Bureau for Medical Services Provider Manual §513.6.2.1, Diagnosis, states that 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.

Bureau for Medical Services Provider Manual §513.6.2.2, Functionality, states that 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 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.

Bureau for Medical Services Provider Manual §513.6.2.3, Active Treatment, states that documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not

include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

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 criteria, and require an ICF/IDD level of care. While the Appellant met the diagnostic criteria with a diagnosis of mild intellectual disability, the other three criteria necessary for program eligibility were not met.

The functionality criteria is only met when clinical documentation confirms the individual is demonstrating substantial adaptive deficits in three (3) of the six (6) major life areas. The only major life area which the Appellant was found to have a substantial deficit was in Learning. The Department representative, Kerri Linton, testified that she examined the narratives in the Appellant's IPE which showed that he was independent in self-care. The Appellant is able to prepare and eat independently, shower and dress independently, and perform grooming tasks independently. He has clear speech and is able to respond and express his needs. He has no restrictions with his mobility, and is able to ride a bike, shoot basketball and throw a football. In the area of self-direction, the narrative indicated that the Appellant is able to make his own choices in food, clothing, and activities, and is able to complete assigned chores such as maintaining his room and doing laundry. The IPE narrative did not reveal any substantial deficits in the area of capacity for independent living. Ms. Linton testified that the low ABAS-III scores are inconsistent with the narrative. Additionally, she noted that the documentation does not support the criteria of the need for active treatment, and that policy specifically states that active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program. The documentation shows that the Appellant is not functioning at a level of care required for ICF/IDD placement.

The Appellant's representative, [REDACTED], was concerned about the Appellant's threats of self-harm and issues with anger management. Ms. [REDACTED] testified that the Appellant was admitted to [REDACTED] most recently due to threats of self-harm. However, self-harm and anger management are not criteria that would establish program eligibility.

A review of the evidence submitted at the hearing reveals the Appellant is only demonstrating a substantial deficit in the major life area of learning. No additional major life area deficits can be awarded. As a result, medical eligibility for participation in the I/DD Waiver Program cannot be established.

CONCLUSION OF LAW

The evidence submitted at the hearing demonstrates the Appellant does not meet the medical eligibility criteria required for participation in the Medicaid I/DD Waiver Program.

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 6th day of December 2016.

Lori Woodward, State Hearing Officer