



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

December 13, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR
ACTION NO.: 16-BOR-2796

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: Pat Nisbet, Teresa McDonough, and Taniua Hardy

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

██████████ A JUVENILE,

Appellant,

v.

Action Number: 16-BOR-2796

**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 JUVENILE. 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 December 7, 2016, on an appeal filed October 5, 2016.

The matter before the Hearing Officer arises from the July 13, 2016 decision by the Respondent to deny the Appellant's application for benefits and services through the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, a psychological consultant to the WV DHHR, Bureau for Medical Services. The Appellant was not present and was represented by her mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

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

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial, dated July 13, 2016
- D-3 Independent Psychological Evaluation (IPE), dated June 23, 2016
- D-4 Notice of Denial, dated May 3, 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) The Appellant applied for benefits and services under the I/DD Waiver Program.
- 2) The Appellant has an eligible diagnosis of mild intellectual disability. (D-3)
- 3) On July 13, 2016, a Notice of Denial was issued to the Appellant advising her that she did not meet the medical eligibility criteria in the functionality category, because the documentation submitted does not support the presence of substantial adaptive deficits in three (3) or more of the following six (6) major life areas: Self-Care, Learning, Self-Direction, Receptive or Expressive Language, Mobility, and Capacity for Independent Living. (D-2)
- 4) A substantial adaptive deficit is a standardized score of three (3) deviations below the mean, or less than one (1) percentile. (D-1)
- 5) On the Adaptive Behavioral Assessment System, Second Edition (ABAS-II), an eligible score is a scaled score of one (1) or two (2).
- 6) Kerri Linton, an expert in the area of psychology, reported the Appellant received a score of two (2) on functional academics, which could have potentially awarded the Appellant a deficit in the area of Learning if other test scores and narrative also supported this finding. (D-3)
- 7) The major life area Capacity for Independent Living has six (6) sub-domains that are measured on the ABAS-II. To be awarded a deficit in this major life area, the Appellant needed to receive eligible scores of one (1) or two (2) in at least three (3) of the sub-domains. (D-1)
- 8) The Appellant had one eligible score in the sub-domain of home living, which was not enough to award a deficit for Capacity for Independent Living. (D-3)
- 9) On March 2, 2016, psychological testing was completed, and the Appellant was given a wide range achievement test which tested reading, spelling, and math. (D-3)
- 10) To potentially be awarded a deficit in Learning, the Appellant needed to score 55 or below in the three (3) areas tested. The Appellant scored 55 in math. She scored above 55 in the other two (2) categories.
- 11) Ms. Linton concluded the Appellant was not awarded a deficit in the area of Learning because as opposed to the ABAS-II in which the Appellant's mother completed the

interview, the wide range achievement test scores were based on the Appellant's responses. Ms. Linton testified that scores are more accurate when they are completed by the Appellant.

- 12) The Appellant's mother initially felt the Appellant met the criteria for a deficit in the area of Capacity for Independent Living, but she agreed with the Department's findings once Ms. Linton explained the definitions and requirements.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 indicates 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

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 Appellant met the diagnostic criteria for participation in the I/DD Waiver Program with an eligible diagnosis of mild intellectual disability. To meet the functionality criteria for the program, the Appellant must demonstrate at least three (3) substantial adaptive deficits of the six (6) major life areas identified in policy.

Policy defines a substantial adaptive deficit as a standardized score of three (3) deviations below the mean, or less than one (1) percentile. The ABAS-II administered to the Appellant has a mean, or average score, of ten (10). An eligible score of 3 standard deviations below the mean of 10, or less than 1 percentile, is a score of a 1 or 2. The Appellant had eligible scores in the areas of functional academics (Learning) and home living.

Kerri Linton, an expert in the area of psychology, reported the Appellant received a score of two (2) on functional academics, which could have potentially awarded the Appellant a deficit in the area of Learning if other test scores and narrative also supported this finding. On March 2, 2016, psychological testing was completed, and the Appellant was given a Wide Range Achievement Test which tested reading, spelling, and math. This test also helped determine eligibility for a deficit in Learning. Scores for this test needed to be at 55 or lower. The Appellant scored 55 in math. She scored above 55 in reading and spelling. Ms. Linton testified that the Wide Range Achievement Test scores were based on the Appellant's responses, which made them more accurate than the ABAS-II that was completed by the Appellant's mother. Ms. Linton concluded that although the Appellant struggled in some areas, the Appellant's overall scores did not show that she should have been awarded a deficit in Learning.

The area of home living is a sub-domain of the major life area of Capacity for Independent Living. The Appellant needed eligible scores in at least three (3) of the sub-domains of Capacity for Independent Living to qualify as demonstrating a substantial adaptive deficit in this major life area. The Appellant had only one eligible score in the sub-domain home living. The Appellant's mother testified that she initially felt the Appellant met the criteria for a deficit in the area of Capacity for Independent Living, she agreed with the Department's findings once the Department's representative reviewed the definitions and requirements. The Appellant's mother did not dispute any of the other major life areas.

A review of the evidence submitted at the hearing reveals the Appellant did not demonstrate any substantial deficits in the six (6) major life areas. As a result, medical eligibility in the functionality category was not met.

CONCLUSIONS OF LAW

- 1) Policy requires that for the functionality criteria to be met for the I/DD Waiver Program, the applicant must demonstrate at least three (3) substantial adaptive deficits of the six (6) major life areas.
- 2) Evidence submitted at the hearing reveals the Appellant did not demonstrate deficits in any of the six (6) major life areas and therefore is not eligible for the I/DD Waiver Program.

DECISION

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

ENTERED this 13th Day of December 2016.

**Natasha Jemerison
State Hearing Officer**