



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St.
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

January 19, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3542

Dear Ms. [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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Pat Nisbet/Taunia Hardy, BMS

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3542

**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 January 13, 2016, on an appeal filed November 24, 2015.

The matter before the Hearing Officer arises from the October 7, 2015 decision by the Respondent to deny Appellant's application for the Title XIX I/DD Waiver Program.

At the hearing, the Respondent appeared by ██████████, a psychologist consultant to the WVDHHR, Bureau for Medical Services. The Appellant was represented by her mother/legal guardian, ██████████. Appearing as witnesses for the Appellant were ██████████, Appellant's sister, and ██████████, Appellant's aunt. All witnesses 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*, §513.3.2, Initial Medical Eligibility
- D-2 Notice of denial dated 10/7/15
- D-3 Independent Psychological Evaluation (IPE) completed on 9/16/15
- D-4 Correspondence from ██████████, M.D., dated 3/5/02
- D-5 Psychoeducational Services Confidential Diagnostic Report

Appellant's Exhibits:

- A-1 Discharge Summary from ██████████ (admitted 11/3/15)
- A-2 Medical records from ██████████ (admitted 11/29/15)

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) On October 7, 2015, Appellant was notified (Exhibit D-2), that her application for benefits and services through the Medicaid I/DD Waiver Program was denied. This notice indicates that the documentation submitted does not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for Waiver eligibility. Substantial adaptive deficits were identified in self-direction and capacity for independent living; however, deficits could not be identified in any of the other four (4) major life areas (self-care, receptive or expressive language, learning, and mobility).
- 2) As a matter of record, Respondent acknowledged the Appellant has an eligible diagnosis of Intellectual Disability. However, Respondent contended that the clinical documentation submitted for review fails to demonstrate that the Appellant meets the functionality criteria – substantial adaptive deficits in at least three (3) of the six (6) major life areas. Consistent with the information contained in the denial notice, Respondent stipulated that the Appellant is demonstrating substantial adaptive deficits in the major life areas of self-direction and capacity for independent living; however, no other deficits were identified.
- 3) Appellant’s representatives contended that Appellant is demonstrating medical eligibility for the program, and indicated that she is also demonstrating substantial adaptive deficits in self-care, learning and mobility.
- 4) 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 (average score) of ten (10). As a result, an eligible score - 3 standard deviations below the mean of 10, or less than 1 percentile - is a score of 1 or 2.
- 5) Specific to the contested area of self-care, the Appellant received an ineligible ABAS score of 4 in the Independent Psychological Evaluation (Exhibit D-3, Page 5 of 6), hereinafter IPE, and the narrative information documented by the evaluator (D-3, Page 2 of 6) is consistent with that finding – “The applicant can bathe, dress, and groom herself but requires verbal prompting. She cannot use a stove but can make a sandwich. In addition, she can use a microwave but her mother has to tell her how much time is needed.” Appellant’s representatives proffered testimony to indicate that Appellant’s abilities have deteriorated since she began having seizures (Exhibit A-2) in November 2015, and that she now requires hands-on assistance to complete most self-care tasks. While testimony indicates that Appellant’s self-care abilities have declined, it does not discredit the validity of the ineligible ABAS score, or the narrative findings recorded by the evaluator in the IPE.

- 6) The evaluator documented in the IPE (Exhibit D-3, Page 3 of 6) – “The applicant is ambulatory and her gross and fine motor skills are adequate for daily activities.” According to Appellant’s representatives, the Appellant can walk/ambulate, but she is unsteady. While a substantial adaptive deficit in mobility is not identified by ABAS scores, the Appellant is independent in ambulation and does not require hands-on active treatment with an assistive device, or any other technology, to learn this skill. Whereas the Appellant can ambulate independently from one location to another, the evidence fails to identify a substantial adaptive deficit in mobility.
- 7) The Appellant received an eligible Scaled Score of one (1) in Functional Academics on the ABAS-II, which indicates eligibility. Respondent noted, however, that the ABAS is a rating system completed by individuals close to the applicant (parents, siblings, etc...) who score the applicant’s abilities based on their observations. In this case, a Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) was conducted by the evaluator, a licensed individual trained to administer the test, which provides a more accurate measure of functional academic skills development. A WAIS-IV has a mean (average) score of 100, therefore, a score of 55 (3 standard deviations below the mean) indicates eligibility. A review of WAIS-IV achievement testing results (Exhibit D-3, Pages 5 and 6) reveals that the Appellant received an eligible score of 55 in math computation, however, the remaining scores (word reading-72, sentence comprehension-64, spelling-62 and reading composite-66) exceed eligibility. As a result, a substantial adaptive deficit in learning (functional academics) was not established.

APPLICABLE POLICY

WV Medicaid Provider Manual §513.3.2 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 513.3.2.2.

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 and need for active treatment criteria. While the Appellant met the diagnostic criteria, 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. 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, (average score) of ten (10). An eligible score of 3 standard deviations below the mean of 10 (less than 1 percentile), is a score of 1 or 2. The WAIS-IV has a mean (average) score of 100, therefore, a score of 55 (3 standard deviations below the mean) indicates eligibility. Pursuant to policy, the presence of substantial adaptive deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review.

The clinical evidence submitted at the hearing confirms the Appellant is demonstrating only two (2) substantial adaptive deficits (self-direction and capacity for independent living) in the major life areas. The ABAS-II scores, as well as narrative documentation, fail to support the establishment of deficits in the major life areas of self-care and mobility, and while the Appellant clearly has delays in learning (functional academics), the WAIS-IV achievement testing results demonstrate academic skills in excess of the guidelines used to identify a substantial adaptive deficit. 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 ____ Day of January 2016.

**Thomas E. Arnett
State Hearing Officer**