



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

February 29, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3639

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,

Todd Thornton
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**

██████████,

Appellant,

v.

Action Number: 15-BOR-3639

**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 28, 2016, on an appeal filed December 9, 2015.

The matter before the Hearing Officer arises from the November 4, 2015 decision by the Respondent to deny the Appellant medical eligibility for the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by ██████████. The Appellant appeared *pro se*, by his grandmother and guardian ██████████. ██████████ observed the hearing but did not participate. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services (excerpt)
- D-2 Notice of denial, dated November 4, 2015
- D-3 Independent Psychological Evaluation (IPE) of Appellant, evaluation date September 29, 2015
- D-4 Individualized Education Program (IEP) of Appellant, dated April 10, 2015
- D-5 Psychological Evaluation of Appellant, examination date July 18, 2015

Appellant's Exhibit:

- A-1 Letter from ██████████, M.D., dated December 7, 2015

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 an applicant for I/DD Waiver Program services.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination. [REDACTED], a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 3) The Respondent denied the Appellant's application based on unmet medical eligibility and issued a notice (Exhibit D-2) dated November 4, 2015, advising the Appellant of the basis for denial as, "Documentation submitted for review does not indicate the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe."
- 4) Ms. [REDACTED] clarified the denial issue as the severity of the Appellant's diagnosis, not the lack of a diagnosis itself.
- 5) The Appellant was diagnosed with "Autistic Disorder" (Exhibit D-3) and "Autism Spectrum Disorder with moderate supports" (Exhibit D-5) – diagnoses, which, if severe enough, meet the diagnostic requirement for the program.
- 6) The evaluating psychologist noted the Appellant "...would benefit from minimal support" with regard to his diagnosis of autism spectrum disorder. Ms. [REDACTED] testified this is not indicative of a diagnosis that is severe in nature.
- 7) The Appellant was not offered an extended school year (Exhibit D-4). Ms. [REDACTED] testified that this is not indicative of a diagnosis that is severe in nature.
- 8) The Appellant participated in the WESTEST school examination (Exhibit D-4). Ms. [REDACTED] testified that the Appellant would have been exempt from this testing if his diagnosis had been severe in nature.
- 9) The Appellant received special education services from the school system in the form of consulting and monitoring (Exhibit D-4). Ms. [REDACTED] testified that an individual with an eligible diagnosis that was severe in nature would have required a one-on-one aide in the school system.

APPLICABLE POLICY

The policy regarding initial medical eligibility for the I/DD Waiver Program is located in Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, at §513.3.2. This policy requires applicants to meet medical eligibility criteria in each of the following categories: diagnosis, functionality, and the need for active treatment.

The policy regarding diagnostic eligibility is located at §513.3.2.1, and requires applicants to 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.

DISCUSSION

The Respondent denied the Appellant's application for the I/DD Waiver Program based on unmet medical eligibility. The unmet medical eligibility component noted on the denial notice was a diagnosis meeting the "severe and chronic disability" standard set in policy.

The Appellant has a diagnosis that is potentially eligible. However, undisputed expert testimony clearly showed that in the Appellant's case, this diagnosis does not meet the severity standard required for program eligibility. Had the Appellant met this standard, it would have been reflected in the special education services the Appellant was receiving in the school system, his school testing requirements and the narrative reports from assessing psychologists.

Without this standard met, the Appellant does not meet medical eligibility requirements and the Respondent was correct to deny his application for the I/DD Waiver Program.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires an eligible diagnosis that is "severe and chronic in nature." Because the Appellant does not meet this severity standard, the diagnostic component could not be established.
- 2) Because the diagnostic component could not be established, medical eligibility as a whole could not be established and the Respondent must deny the Appellant's application for the I/DD Waiver Program.

DECISION

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

ENTERED this ____ Day of February 2016.

**Todd Thornton
State Hearing Officer**