



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1027 N. Randolph Ave.  
Elkins, WV 26241

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

April 14, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-1316

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Taniua Hardy, BMS, WVDHHR

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

██████████,

**Appellant,**

**v.**

**Action Number: 17-BOR-1316**

**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 April 6, 2017, on an appeal filed February 22, 2017.

The matter before the Hearing Officer arises from the February 7, 2017 decision by the Respondent to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by Kerri Linton, Long-Term Care Clinical Consultant, PC&A/Bureau for Medical Services. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 I/DD Waiver Services Manual Chapter 513.6
- D-2 Notice of Decision dated February 7, 2017
- D-3 Independent Psychological Evaluation dated January 23, 2017
- D-4 ██████████ County Schools Confidential Psychological Evaluation dated May 5, 2016
- D-5 Individualized Education Program dated May 27, 2016
- D-6 Letter from ██████████, M.D., dated January 19, 2016

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 February 7, 2017, the Appellant was notified (D-2) that his application for the I/DD Waiver Medicaid Program was denied because his condition does not meet the required medical criteria for the program.
- 2) The Respondent confirmed that the Appellant has a potentially eligible diagnosis for the program – severe autism – however, he does not exhibit substantial delays in three (3) of the six (6) major life areas identified for I/DD Waiver eligibility.
- 3) The Respondent stipulated that the Appellant – who is five (5) years old - is exhibiting substantial delays in the major life areas of *self-direction* and *receptive or expressive language*. However, relevant test scores did not reveal the presence of substantial delays in *self-care, mobility, learning* and *capacity for independent living*.
- 4) In order to qualify for the program, applicants must have a score of one (1) or two (2) on the Adaptive Behavior Assessment System (ABAS) III (D-3). The Appellant received ineligible scores of six (6) in *self-care*; six (6) in *mobility* (motor skills); and seven (7) in *learning* (functional academics). An individual must have eligible scores in at least three (3) of six sub-domains of *capacity for independent living* in order to be determined substantially deficient in that functional area. The Appellant received eligible scores in the subdomains of community use and social, but displayed ineligible scores of three (3) in home living; four (4) in health and safety; and four (4) in leisure. The ABAS III did not consider the area of employment as the Appellant is a child.
- 5) Exhibit D-3, which includes narrative information to support the Appellant’s ABAS III scores, indicates that the Appellant attempts dressing behaviors, requires some assistance with toileting, and can feed himself. However, he cannot bathe without assistance. The Appellant can name colors, but cannot print his name and has limited verbal responses. He ambulates without assistance.
- 5) Exhibit D-4 reveals eligible ABAS III scores – based on parent and teacher reports - in only communication, self-direction and one area of capacity for independent living (social), which is consistent with information in Exhibit D-3.
- 6) [REDACTED], the Appellant’s mother, testified that the Appellant has regression autism and can complete no self-care activities. He self-mutilates, has health and safety issues, and cannot be taken out in public for any length of time. Ms. [REDACTED] stated that the Appellant lost most of his language skills when he had influenza, and can no longer be prompted to count to 100. Ms. [REDACTED] stated that the Appellant’s psychological evaluation took only 40 minutes, and he was having a “good day” on that date.

## APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513.6.2.2 - An individual who applies for I/DD Waiver Services must have substantial adaptive deficits in three out of six identified major life areas - *self-care, receptive or expressive language, learning, mobility, self-direction* and *capacity for independent living*. *Capacity for independent living* includes six sub-domains: home living, social skills, employment, health and safety, community and leisure activities.

Substantial deficits are defined as standardized scores of three (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 (I/DD) normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior . . . 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.

## DISCUSSION

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. While the Appellant has a potentially eligible diagnosis, documentation fails to confirm that he is demonstrating substantial adaptive deficits in three (3) of the six (6) major life areas identified for Waiver eligibility.

The Appellant was awarded deficits in *receptive or expressive language* and *self-direction*; however, relevant test scores do not reflect substantial deficits in the other major life areas.

Based on information provided during the hearing, medical eligibility for participation in the I/DD Waiver Program has not been established.

## CONCLUSIONS OF LAW

The Respondent's decision to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program is affirmed.

## DECISION

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

**ENTERED this 14th Day of April 2017.**

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**Pamela L. Hinzman  
State Hearing Officer**