



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jim Justice
Governor

BOARD OF REVIEW
Raleigh District DHHR
407 Neville Street
Beckley, WV 25801

Bill J. Crouch
Cabinet Secretary

October 26, 2017

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR
ACTION NO.: 17-BOR-2554

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Taniua Hardy, Bureau for Medical Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

█, A JUVENILE,

Appellant,

v.

Action Number: 17-BOR-2554

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 October 25, 2017, on an appeal filed September 27, 2017.

The matter before the Hearing Officer arises from the September 13, 2017, decision by the Respondent to deny the Appellant's application for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by █, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by his guardian, █. Appearing as a witness for the Appellant was █. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Medicaid Provider Manual §513.6
- D-2 Notice of Denial dated September 13, 2017
- D-3 Independent Psychological Evaluation dated September 5, 2017
- D-4 Court of Common Pleas, Juvenile Division, █ (undated excerpt)
- D-5 Individualized Education Program dated October 25, 2016
- D-6 Individual Student Report – Science Summative, 2016-2017 School Year

Appellant's Exhibits:

- A-1 Letter from █, M.A., of FMRS Health Systems dated October 16, 2017
- A-2 Progress Reports from █ dated September 8, 2017

A-3 Individual Student Report – English, Math, and Science Summative, 2016-2017 School Year

A-4 Individualized Education Program dated September 25, 2017

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.
- 2) The Respondent issued a Notice of Denial on September 13, 2017, advising the Appellant that his application had been denied as he did not meet the functionality criteria required for I/DD Waiver services.
- 3) The Respondent did not dispute that the Appellant had an eligible diagnosis of Intellectual Disability, meeting the diagnostic criteria for program eligibility.
- 4) The Respondent did not find that the Appellant was exhibiting at least three (3) substantial adaptive deficits of the six (6) major life areas identified in policy.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive I/DD Waiver Program Services, an applicant must meet the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for active treatment; and
- Requirement of ICF/IID Level of Care.

Diagnosis

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, 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.

Functionality

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 75th 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.

Active Treatment

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

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition that manifested prior to age 22, the functionality criteria of at least three (3) substantial adaptive deficits of the six (6) major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care.

The Appellant met the diagnostic criteria with an eligible diagnosis of an Intellectual Disability. However, based on the standardized test scores that measure adaptive behavior, the Appellant did not meet the functionality criteria.

According to the Adaptive Behavior Scale, Third Edition (ABAS-III), that was administered to the Appellant in September 2017, the Appellant was not substantially delayed in any of the six major life areas. Policy defines a substantial adaptive deficit as a standardized score of less than one percentile or three standard deviations below the mean. An eligible score of less than one percentile on the ABAS-III, when the mean or average is a 10, would be a score of a 1 or 2. The Appellant did not have any eligible scores.

The Wide Range Achievement Test, Fourth Edition (WRAT-4) measures an individual's academic achievements. The mean of this test is 100, with three standard deviations below the mean as 55 or below. The Appellant did not have an eligible score on the WRAT-4.

The Appellant's representative and witness contended that the Appellant is sometimes able to express his wants and needs, or perform self-care tasks independently, and sometimes he cannot. It was reported that the Appellant does not interact socially with other children, and often has uncontrollable tantrums.

Policy requires that substantial adaptive deficits must be established by standardized test scores. Whereas the Appellant did not have eligible tests scores to support substantial adaptive deficits in at least three of the six major life areas identified in policy, the functionality criteria could not be met.

CONCLUSIONS OF LAW

- 1) Policy requires that the diagnostic, functionality, need for active treatment criteria and the need for ICF/IID level of care must be met to establish medical eligibility for the I/DD Waiver Program.
- 2) The Appellant met the diagnostic criteria for program eligibility.
- 3) Policy requires that for the functionality criteria to be met, the applicant must be demonstrating at least three (3) substantial adaptive deficits of the six (6) major life areas as determined by standardized test scores.
- 4) Substantial adaptive deficits could not be identified in any of the six major life areas.
- 5) The Appellant did not meet the functionality criteria required to meet medical eligibility for services under the I/DD Waiver Program.

DECISION

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

ENTERED this 26th day of October 2017

**Kristi Logan
State Hearing Officer**