



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

Bill J. Crouch
Cabinet Secretary

Board of Review
PO Box 1247
433 Mid Atlantic Parkway
Martinsburg, West Virginia 25402

M. Katherine Lawson
Inspector General

August 16, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR,
ACTION NO.: 18-BOR-1892

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,

Lori Woodward
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: 18-BOR-1892

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 August 9, 2018, on an appeal filed June 18, 2018.

The matter before the Hearing Officer arises from the March 29, 2018 decision by the Respondent to deny Appellant's application for the Title XIX I/DD Waiver Program (I/DD Program).

At the hearing, the Respondent appeared by ██████████, a psychologist consultant to the WV DHHR, Bureau for Medical Services (BMS). The Appellant appeared by his mother, ██████████. Observing, but not participating, were ██████████ and ██████████. The witnesses were sworn, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Manual, §513.6, *et. seq.*
- D-2 Notice of Denial, dated March 29, 2018
- D-3 Independent Psychological Evaluation (IPE) completed on March 12, 2018
- D-4 ██████████ County Individualized Education Program, May 23, 2017
- D-5 IPE Addendum, March 12, 2018
- D-6 Vocational Evaluation Services from ██████████, January 11, 2018

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, a 17-year-old, was an applicant for the I/DD Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Program, including eligibility determination.
- 3) [REDACTED], a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 4) The Respondent denied the Appellant's application and issued a notice dated March 29, 2018, which provided the basis for denial as follows: (Exhibit D-2)

Documentation submitted for review does not support the presence of an eligible diagnosis of intellectual disability or a related condition which is severe. [REDACTED] does not require an ICF Level of Care.

Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas: Self-Care, Self-Direction, Receptive or Expressive Language, Mobility, Capacity for Independent Living.

- 5) The Appellant was found to have a substantial limitation in the major life area of Learning. (Exhibit D-2)
- 6) The Appellant is diagnosed with Autistic Disorder and Attention-Deficit/ Hyperactivity Disorder (ADHD). (Exhibit D-3)
- 7) The severity of the Appellant's Autistic Disorder diagnosis was measured in the March 2018 IPE using the Gilliam Autism Rating Scale-Third Edition (GARS-3), resulting in a score of 74 which is considered as a Level 2 Autism, moderate symptoms. (Exhibit D-3)
- 8) The 2017 Individualized Education Program (IEP) did not support a diagnosis of Autism which is severe in nature. (Exhibit D-4)
- 9) There was no testimony or documentation provided that indicated the Appellant has a designation as a Medley class member.

- 10) Because of the discrepancy between the narrative reports and scores contained in the Adaptive Behavior Assessment Systems-Third Edition (ABAS-III) completed by the Appellant's mother and because these scores were very different from those that were found in his 2016 evaluation, the Respondent requested an ABAS test be completed by the Appellant's teachers.
- 11) The teachers rated the Appellant on the ABAS-III test with mostly sixes, sevens, and eights in the same areas where the Appellant's mother scored him with ones and twos. (Exhibit D-5)
- 12) The narratives and test scores did not support a finding of a diagnosis of intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits in at least three of the six identified major life areas for program eligibility. (Exhibits D-3 through D-5)

APPLICABLE POLICY

WV Medicaid Provider Manual §513.6.1.1 explains that the initial eligibility determination process involves the use of an IPE which includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is used in making a medical eligibility determination for the Program.

WV Medicaid Provider Manual §513.6.2, *Initial Medical Eligibility*, states that to be medically eligible, the applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

The MECA determines the qualification for an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has 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. For the IDDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order to be eligible to receive IDDW 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

WV Medicaid Provider Manual §513.6.2.1 513, **Diagnosis**, requires the applicant 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 may, if severe and chronic in nature, make an individual eligible for the IDDW 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 disabilities 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 disabilities.

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 under Section 513.6.2.2, Functionality.

WV Medicaid Provider Manual §513.6.2.2, **Functionality**, requires that 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 ID normative populations when intellectual disability 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 I/DD Program, an individual must meet all four criteria required by policy: diagnostic, functionality, need for active treatment, and requirement of ICF/IDD Level of Care. The Respondent denied the Appellant's application for the I/DD Program based on not meeting the diagnostic eligibility and functional deficit criteria. Additionally, the Appellant was not found to require an ICF/IDD Level of Care.

In determining the diagnosis criteria, Ms. [REDACTED] reviewed the 2018 IPE administered by [REDACTED], a licensed psychologist. The Appellant was administered the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-4) which determined the Appellant's Full-Scale Intelligence Quotient (IQ) at a 77. Ms. [REDACTED] testified this score, consistent with his other assessments, is considered to be borderline intelligence which does not indicate an intellectual disability.

Ms. [REDACTED] also reviewed the severity of the Appellant's diagnosis of Autistic Disorder. The level of the Appellant's Autism was measured by the GARS-3, which he scored a 74. Ms. [REDACTED] testified a score of 74 is considered a Level 2 Autism, moderate symptoms. A Level 2 Autism does not support a finding of severe Autism as required to be considered an eligible diagnosis.

The Appellant's 2017 IEP did not support a diagnosis of Autism which is severe in nature. Ms. [REDACTED] testified that the Appellant's 2017 IEP addressed academically-focused goals and did not indicate any adaptive issues that needed to be addressed. She also noted that the 2017 IEP indicated that the Appellant would be receiving a standard diploma which is unusual for the population of people who qualify for the I/DD Program. In her review of the Appellant's 2017 IEP, Ms. [REDACTED] concluded that it did not indicate that the Appellant's Autism diagnosis was severe in nature.

In reviewing the narrative contained in the Appellant's 2018 IPE, she found that it was inconsistent with the ABAS-III scores derived from the Appellant's mother. The Appellant was found to be able to dress himself, keep himself occupied during Mr. [REDACTED] interview with the Appellant's mother, he was able to make his wants and needs known, and was able to accomplish different tasks such as stating his name and other people's names, to be able to distinguish between familiar and unfamiliar settings, and able to associate that different activities occur at different time periods of the day. Ms. [REDACTED] stated in reviewing the Appellant's mother scores on the ABAS-III, she rated the Appellant in the extremely low range in all the nine categories with standardized scores of one (1) in Community Use, Functional Academics, Home Living, Leisure, Self-Care and Self-Direction, a standardized score of two (2) in the area of Communication and Social, and a standardized score of three (3) in the area of Health and Safety.

Because there was a discrepancy between the narrative and test scores contained in the ABAS-III completed by the Appellant's mother, which Ms. [REDACTED] noted was also very different from those that were found in the testing he underwent in 2016, the Respondent requested an ABAS-III test be completed by the Appellant's teachers (hereinafter referred to as "IPE Addendum"). The teachers rated the Appellant on the ABAS-III test with mostly scores consistent in the below average range with one extremely low range under the domain of social, with a score of three (3). The Appellant's teacher noted that the Appellant "adheres to schedules" and "rushes to finish work to avoid homework".

In evaluating both the IPE and IPE Addendum, Ms. [REDACTED] concluded that someone who has severe autism would be very unlikely to have such a discrepancy with two separate ratings of adaptive behavior done by different people. She found that the test scores and narratives did not demonstrate that the Appellant had substantial adaptive deficits in any of the six major life areas identified for I/DD Program eligibility except in the area of Learning.

The Appellant's mother stated that the Appellant is functional "to a point", but in other things he is not. She testified that she is "stuck" because he will not qualify for anything and felt that it was unfair for people who try to get help but do not qualify for anything. The Appellant's witness stated that the Appellant requires a lot of prompting, requires frequent breaks, does not want to work and needs to be redirected constantly. She requested the Appellant have another evaluation completed by a specific teacher, however, the request is beyond the 60 day timeframe allowed by policy and is therefore untimely.

The Appellant did not meet the functionality requirement for medical eligibility because he did not have substantial deficits, as defined by policy, in any of the six major life areas other than in the area of Learning. None of the Appellant's standardized scores were in the range of three standard deviations below the mean or less than one percentile using the ABAS-III.

Without diagnostic eligibility or the functionality requirement, 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) The narrative and tests contained in the documentation reviewed for the Appellant's application for the I/DD Program did not show that the Appellant met the diagnosis or functionality requirements needed for program eligibility.
- 2) Medical eligibility 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** the Department's action to deny the Appellant's application for the Title XIX I/DD Waiver Program.

ENTERED this 16th day of August 2018.

Lori Woodward, State Hearing Officer