



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

Bill J. Crouch  
Cabinet Secretary

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

M. Katherine Lawson  
Inspector General

September 27, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.:18-BOR-2287

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: Bureau for Medical Services

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

██████████,

**Appellant,**

v.

**Action Number: 18-BOR-2287**

**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 September 26, 2018.

The matter before the Hearing Officer arises from the August 29, 2018, decision by the Respondent to deny medical eligibility 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 mother, ██████████. 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 August 15, 2018, and Notice of Amended Denial dated August 29, 2018
- D-3 Independent Psychological Evaluation dated July 17, 2018
- D-4 Appalachian Regional Healthcare Intake Form dated June 20, 2018
- D-5 Ambulatory-Patient Clinic Note dated June 20, 2018
- D-6 Psychological Evaluation dated May 14, 2018
- D-7 Individualized Education Plan dated February 21, 2018
- D-8 Education Program Team Meeting dated May 9, 2016
- D-9 Educational Evaluation Report dated April 18, 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) The Appellant applied for services under the I/DD Waiver Program.
- 2) The Respondent issued a Notice of Denial on August 29, 2018, advising the Appellant that his application had been denied as he did not meet the diagnostic and functionality criteria required for I/DD Waiver Program eligibility (Exhibit D-2).
- 3) The Respondent contended that the Appellant had a potentially eligible diagnosis of autism spectrum disorder, but that the Appellant did not meet the severity criteria found in policy.
- 4) Additionally, the Respondent did not find that the Appellant was exhibiting at least three (3) substantial adaptive deficits out of the six (6) major life areas identified for I/DD Waiver eligibility.

### **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 75<sup>th</sup> 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 which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three (3) substantial adaptive deficits out 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 Respondent's witness, [REDACTED], testified that the Appellant has a diagnosis of autism, which is a related condition, that if chronic and severe in nature, may meet the diagnostic criteria for I/DD Waiver services. However, Ms. [REDACTED] contended that the Appellant's autism was not severe and he did not meet the functionality criteria of at least three substantial adaptive deficits.

According to the Adaptive Behavior Scale, Third Edition (ABAS-III), administered to the Appellant in July 2018, 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 a score of 55 or below. The Appellant did not have an eligible score on the WRAT-4 administered in July 2018.

The Children's Autism Rating Scale, Second Edition (CARS-2) confirmed the diagnosis of autism, with a T-score of 45, placing him in the mild to moderate range of severity.

The Kaufman Brief Intelligence Test measured the Appellant's full scale Intelligence Quotient as 80, within the low-average range.

The Appellant's mother provided testimony regarding the Appellant's difficulty in learning, self-care and behavioral issues and his need for assistance.

However, based on the documentation submitted for review, the Appellant does not meet the severity criteria required for the related condition of autism, which does not appear to impair his general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons. Furthermore, the Appellant does not have any substantial adaptive deficits in the six major life areas based on the standardized test scores administered as part of the application process.

## 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's autism did not meet the severity criteria to meet the diagnostic criteria.

- 3) Policy requires that for the functionality criteria to be met, the applicant must demonstrate 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 diagnostic or 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 Respondent's decision to deny the Appellant's application for services under the I/DD Waiver program.

**ENTERED this 27<sup>th</sup> day of September 2018**

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**Kristi Logan  
State Hearing Officer**