



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

Bill J. Crouch
Cabinet Secretary

Board of Review
State Capitol Complex
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June 25, 2019

Jolynn Marra
Interim Inspector General

██████████, DHHR Guardian for: ██████████, A PROTECTED INDIVIDUAL
Delivered via e-mail

RE: ██████████, A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 19-BOR-1495

Dear Ms. ██████████

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matters.

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
PC&A
KEPRO

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action No.: 19-BOR-1495

**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 PROTECTED INDIVIDUAL. 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 June 6, 2019, on an appeal filed March 28, 2019.

The matter before the Hearing Officer arises from the Respondent's March 5, 2019 decision to deny the Appellant's application for participation in the I/DD Waiver Program due to unmet medical eligibility.

At the hearing, the Respondent appeared by Kerri Linton. The Department is the guardian for the Appellant, and she was represented by her DHHR guardian, █. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits*:

- | | |
|-----|--|
| D-1 | Bureau for Medical Services Provider Manual (excerpt)
Chapter 513 – Intellectual and Developmental Disabilities Waiver (IDDW)
§§ 513.6 – 513.6.4 |
| D-2 | Notice of Decision
Notice date: March 5, 2019 |
| D-3 | Independent Psychological Evaluation
█, MA
Evaluation date: January 30, 2019 |

- D-6 Updated Treatment Plan
[REDACTED]
Date: September 20, 2017
- D-8 [REDACTED] County Schools
Confidential Psychoeducational Evaluation Report
Testing Date: September 15, 2016
- D-11 Court Summary prepared by [REDACTED]
Date: November 28, 2018
- D-16 Documents from [REDACTED]

*Respondent did not enter all exhibits initially submitted and marked for evidence.

Appellant's Exhibits:

- A-1 Neuropsychology Group of West Virginia PLLC
Evaluation date: April 23, 2019
- A-2 Neuropsychology Group of West Virginia PLLC
Addendum date: May 29, 2019

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 the I/DD Waiver 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 Waiver Program, including eligibility determination.
- 3) Kerri Linton, a licensed psychologist employed by PC&A, made the eligibility determination regarding the Appellant.
- 4) The Appellant submitted a January 30, 2019 psychological evaluation in conjunction with this application. (Exhibit D-3)
- 5) By notice dated March 5, 2019, (Exhibit D-2) the Respondent notified the Appellant that her application for the I/DD Waiver Program was denied. The notice provided the reason for denial as “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.”

- 6) This notice (Exhibit D-2) advised the Appellant that she was determined to have only established a substantial adaptive deficit in *self-direction*.
- 7) Ms. Linton reviewed additional documents submitted on the Appellant’s behalf, including those which were part of the initial eligibility determination (Exhibits D-6, D-8, D-11, and D-16) and those which were submitted after the decision but prior to hearing (Exhibits A-1 and A-2).
- 8) On the January 2019 psychological evaluation (Exhibit D-3) of the Appellant, the psychologist administered a test to assess adaptive behavior – the Adaptive Behavior Assessment System (ABAS-3).
- 9) The ABAS-3 (Exhibit D-3) was completed based on information reported by the Appellant’s grandmother.
- 10) The Appellant’s ABAS scaled scores demonstrated a substantial adaptive deficit in the area of *self-direction*. (Exhibit D-4)
- 11) The Appellant obtained eligible ABAS scaled scores on only two of the six sub-domains of the area of *capacity for independent living – leisure* and *social* – which were insufficient to establish the presence of a substantial adaptive deficit in this area. (Exhibit D-4)
- 12) The Respondent conceded the Appellant has a substantial adaptive deficit in the area of *learning*.
- 13) A subsequent report (Exhibits A-1 and A-2) was prepared after the Respondent’s decision and provided ABAS-3 scores for the Appellant which were based on information reported by [REDACTED], a residential counselor at the shelter where the Appellant resided.

APPLICABLE POLICY

The policy regarding the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513.

At §513.6.2, this policy addresses initial medical eligibility, and reads, “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.”

At §513.6.2.2, this policy addresses the functionality component and its required criteria. The policy requires an applicant to have substantial deficits in at least three of the six major life areas – self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living. The capacity for independent living is further divided into six sub-domains – home living, social skills, employment, health and safety, community and leisure. Policy requires a minimum of three of these sub-domains to be substantially limited for an applicant to meet the criteria for this major life area.

Functionality policy (§513.6.2.2) also defines substantial deficits 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 [intellectually disabled] normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior.”

DISCUSSION

The Appellant requested a fair hearing based on the decision of the Respondent to deny her application for the I/DD Waiver Program based on their finding that she did not establish medical eligibility. The Respondent must show by a preponderance of the evidence that the Appellant did not establish medical eligibility for the program.

The Respondent denied the Appellant’s application for I/DD Waiver Services based on unmet functionality. Functionality in this case was measured using scores from the ABAS-3, a testing instrument which measures adaptive behavior. Scores provided based on responses by the Appellant’s grandmother were considered more accurate than those provided in a report prepared after the denial and based on the responses of a residential counselor at the shelter where the Appellant resided. The scores from the initial ABAS-3 established one substantially limited area – *self-direction* – and the Respondent conceded the area of *learning*. The two areas established are insufficient to establish functionality and based on unmet functionality the Respondent was correct to deny the Appellant’s application for participation in the I/DD Waiver Program based on unmet medical eligibility.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not establish substantial deficits in at least three of the six major life areas defined by policy, the Appellant did not meet the functionality component of medical eligibility for the I/DD Waiver Program.
- 2) Because the Appellant did not establish medical eligibility, the Respondent must deny the Appellant’s application for I/DD Waiver services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's application for the I/DD Waiver Program due to unmet medical eligibility.

ENTERED this ____ Day of June 2019.

**Todd Thornton
State Hearing Officer**