



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

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Cabinet Secretary

BOARD OF REVIEW  
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Jolynn Marra  
Interim Inspector General

June 26, 2019

[REDACTED]

RE: [REDACTED], A JUVENILE v. WV DHHR  
ACTION NO.:19-BOR-1604

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  
[REDACTED]

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

█, A JUVENILE,

**Appellant,**

v.

**Action Number: 19-BOR-1604**

**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 June 12, 2019, on an appeal filed April 22, 2019.

The matter before the Hearing Officer arises from the April 11, 2019, decision by the Respondent to deny the Appellant's application for services under the Intellectual and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant was represented by █, advocate with █. Appearing as a witness for the Appellant was Appellant's mother, █. All witnesses were sworn, and the following documents were admitted into evidence:

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §513.6 (excerpt)
- D-2 Notice of Denial dated April 11, 2019
- D-3 Independent Psychological Evaluation (IPE) dated April 3, 2019
- D-4 Independent Psychological Evaluation (IPE) dated January 15, 2019
- D-5 █ County Schools IEP dated March 28, 2019
- D-6 Notice of Denial dated March 12, 2019

**Appellant's Exhibits:**

- A-1 Updated █ County Schools IEP

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 is a 17-year-old in the 11<sup>th</sup> grade on track to receive a standard high school diploma in May 2020. (Exhibit A-1)
- 2) An application was made on behalf of the Appellant for services under the I/DD Waiver program.
- 3) As part of the application process, the Appellant underwent an Independent Psychological Evaluation (IPE) on January 15, 2019. (Exhibit D-4)
- 4) On March 12, 2019, the Respondent sent notice to the Appellant that his Waiver application was denied because the “[d]ocumentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe.” (Exhibit D-6)
- 5) The Appellant exercised his right to have a second psychological evaluation, which he underwent on April 3, 2019. (Exhibit D-3)
- 6) Kerri Linton, a licensed psychologist contracted by the Bureau for Medical Services, reviewed the Appellant’s application and supporting documentation.
- 7) The Appellant has a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD), and Autism Disorder (Level 2). (Exhibits D-3 and D-4)
- 8) The Appellant’s test scores and narratives indicate that he is functioning intellectually in the average range. (Exhibits D-3, D-4, D-5 and A-1)
- 9) The Appellant’s Autism Disorder does not meet the severity criteria needed to establish program eligibility.
- 10) On April 11, 2019, the Respondent sent notice to the Appellant that his Waiver application was denied because the “[d]ocumentation submitted for review does not support the presence of an eligible diagnosis for the I/DD Waiver program of intellectual disability or a related condition which is severe. The need for an ICF/IID level of care is not established within the documents submitted for review.” (Exhibit D-2)

## APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility*, in part, states that to be medically eligible to receive I/DD Waiver Program Services, an 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. Additionally, 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.

Bureau for Medical Services Provider Manual §513.6.2.1, *Diagnosis*, explains that 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.

## DISCUSSION

Pursuant to policy, an individual must first meet the medical eligibility criteria of a diagnosis of an 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 I/DD Waiver program eligibility.

Ms. Linton testified she reviewed the Appellant's application and supporting documentation and found that the Appellant did not meet the diagnostic criteria for program eligibility. Ms. Linton found that the Appellant was diagnosed with ADHD, ODD and Asperger's (also known as Autism Spectrum Disorder). Although Autism can be considered as a related condition, it must be a severe and chronic disability to meet program eligibility.

In determining the severity of the autism, Ms. Linton considered the Gilliam Autism Rating Scale-3 (GARS-3) Index Score of 96 (96<sup>th</sup> percentile), which equates to a Level 2 rating. Ms. Linton explained that the GARS-3 scores are derived from answers given from the Appellant's mother. Ms. Linton determined after reviewing all the other test scores, narratives and documentation, that the Appellant's Asperger's Disorder was not severe and chronic for program eligibility.

Ms. Linton explained that a diagnosis of Asperger's Disorder is not considered to be a related condition because it does not meet the criteria of having substantial cognitive delays typically seen in individuals that do have a severe related condition. She opined that Asperger's Disorder does not mimic the symptoms of intellectual disability like other related conditions often do. This is evidenced by the Appellant's average range of intellectual functioning shown by the Full Scale IQ score of 106 in the Wechsler Adult Intelligence Scale-IV (WAIS-IV) testing and the Wide Range Achievement Test-5 (WRAT-5) scores of 100 in word reading, 90 in spelling, and 92 in math computation. Ms. Linton explained that scores of 55 and below are considered to be of the severity found in those individuals who do meet program eligibility and require an ICF/IID level of care.

Ms. Linton also considered the fact that the Appellant was on track for a standard high school diploma with a graduation goal of May 2020. She stated that often those individuals who meet program eligibility criteria are typically offered a modified diploma which allows for continuation of school until the age of 22. Additionally, Ms. Linton observed that the Appellant previously took core high school classes in the morning and spent his afternoons studying Robotics at the technical school. Ms. Linton stated that this type of curriculum is not generally availed to those individuals who meet the criteria for severe autism.

The Appellant's mother, [REDACTED], testified that the submitted IEP was "filled with errors," citing incorrect dates, unchanged goals from 2017, and no notation regarding his autism diagnosis. She requested that an updated IEP which she expected to be available later that day be allowed into the record. Absent an objection from Ms. Linton, the hearing was held open for the updated IEP (see Exhibit A-1). Ms. [REDACTED] testified that she pulled the Appellant out of school because of the encopresis and "some other issues," and that the Appellant went from 98% GE and 2% special ed in October to 100% LRE at home. The updated IEP also indicated that the Appellant is anticipated to receive a standard high school diploma in May 2020.

Ms. Linton concluded that it was clear the Appellant has behavioral challenges in the school system and at home and is facing difficult medical problems. However, she did not find any evidence of a significant presence of severe autism to meet the medical diagnosis requirement for program eligibility. Social impairment and non-verbal communication type symptoms are not stand-alone

evidence of a severe related condition to meet the medical diagnosis requirement for program eligibility.

The preponderance of evidence showed that the Appellant does not meet the diagnostic criteria as defined by policy for medical eligibility in the I/DD Waiver program.

### **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) To meet the diagnosis criteria, an applicant must have been diagnosed with an 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.
- 3) The testimony and documentation submitted did not establish that the Appellant's diagnosis of Autism Disorder is a related condition which is severe and chronic in nature.
- 4) The Appellant does not meet the medical criteria for I/DD Waiver eligibility.

### **DECISION**

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

**ENTERED this 26<sup>th</sup> day of June 2019.**

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**Lori Woodward, State Hearing Officer**