



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

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Board of Review  
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Jolynn Marra  
Interim Inspector  
General

July 31, 2019



RE: [REDACTED], A MINOR v. WVDHHR  
ACTION NO.: 19-BOR-1698

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Stacy Broce, Bureau for Medical Services  
Janice Brown, KEPRO

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

█, A MINOR,

**Appellant,**

v.

**ACTION NO.: 19-BOR-1698**

**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 minor. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on July 24, 2019, on an appeal filed May 9, 2019.

The matter before the Hearing Officer arises from the April 23, 2019 determination by the Respondent to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation & Assessment (PC&A). The Appellant appeared by her mother, █. Both witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual §§ 513.6-513.6.4
- D-2 BMS Notice, dated April 23, 2019
- D-3 Independent Psychological Evaluation (IPE), dated March 25, 2019
- D-4 Psychological Intake and Assessment, dated September 30, 2013
- D-5 Review ICAP, dated January 25, 2019
- D-6 ABAS III Parent Form, dated January 25, 2019
- D-7 WV IDD Waiver Structured Interview, dated January 25, 2019
- D-8 IPE, dated May 21, 2014
- D-9 IPE Addendum, dated March 25, 2019
- D-10 Individualized Education Program (IEP), dated January 24, 2019

## **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 following Findings of Fact are set forth.

### **FINDINGS OF FACT**

- 1) The Appellant applied for the Medicaid WV I/DD Waiver Program (IDDW) in 2014, was found to be eligible and was placed on the IDDW wait list.
- 2) The Appellant's 2014 eligibility was based on an eligible diagnosis of autism (Exhibits D-4, D-5, D-7, and D-8).
- 3) Upon slot-release in 2019, the Appellant was found to lack an eligible diagnosis, functional deficits and had a second medical evaluation.
- 4) On April 23, 2019, the Respondent issued a notice advising the Appellant that her application for IDDW was denied due to lacking an eligible diagnosis of intellectual disability or a related condition which is severe. The notice offered further reason of denial including that submitted documentation did not support the presence of substantial adaptive deficits in three or more of six major life areas (Exhibit D-2).
- 5) The notice advised that the Appellant lacked substantial limitations in *self-care, learning, self-direction, receptive or expressive language, mobility, and capacity for independent living* (Exhibits D-2 and D-3).
- 6) In 2014, psychologist [REDACTED] conducted an Independent Psychological Evaluation (IPE) and established the Appellant's diagnosis of Autistic Disorder and ADHD-combined Type by history and established the Appellant's intellectual capability with significantly delayed adaptive behaviors at the time of the assessment (Exhibits D-3).
- 7) During the 2014 IPE, the Appellant's full scale IQ was assessed at 75, the borderline intellectual functioning range (Exhibit D-8).
- 8) The Appellant's 2014 ABAS-2 provided that the Appellant scored a 1 in the areas of *communication, home living, and self-direction*. The Appellant scored a 2 in the areas of *leisure, and self-care*. (Exhibit D-8).
- 9) In 2014, the Appellant scored 48 in the area of *reading* and met criteria for substantial deficit in the area of *learning* (Exhibit D-8).

- 10) On November 16, 2015, the Appellant's full scale IQ was 77 (Exhibit D-9).
- 11) The Appellant received services -- including speech therapy -- through her Individualized Education Plan (IEP) under the exceptionality of Autism (Exhibits D-9 and D-10).
- 12) On January 25, 2019, an ICAP was completed and the Appellant received a service score of 49 and a service level of 4 (Exhibit D-5).
- 13) On March 25, 2019, psychologist [REDACTED] conducted an Independent Psychological Evaluation (IPE) (Exhibit D-3).
- 14) The Appellant's mother was the reporter for the Appellant's developmental, medical, mental health histories, adaptive behavior scales, and Autism Screening for the IPE (Exhibit D-3).
- 15) The Appellant's full scale IQ was 68 and functioned at a borderline intellectual functioning (Exhibit D-3).
- 16) The Appellant's ABAS-3 2019 Teacher scaled scores ranged from 7 in the area of *leisure* to 12 in the area of *community use* and the Appellant's 2019 ABAS-3 Parent scaled scores ranged from 2 in the area of *communication* to 9 in the area of *functional academics*. (Exhibit D-3)
- 17) On the 2019 Wide Range Achievement Test (WRAT-5), the Appellant's scores ranged from 72 to 92 (Exhibit D-3).
- 18) The 2019 Autism Screening was completed pursuant to the parent report. Scores indicated that a diagnosis of Autism was likely with a severity level of 3 (Exhibit D-3).
- 19) The IPE diagnosis and narrative reflect an Autism Spectrum Disorder, Level 1 (Exhibit D-3).
- 20) Autism Spectrum Disorder, Level 1 is not an eligible related diagnosis which is severe (Exhibits D-1 and D-3).

### **APPLICABLE POLICY**

#### **Bureau for Medical Services (BMS) Manual § 513.6 provides in part:**

In order for an applicant to be found eligible for the IDD Wavier Program, they must meet medical eligibility ... Medical eligibility is determined by the Medical Eligibility Contract Agent (MECA) through a review of the IPE completed by a member of the Independent Psychologist Network.

**BMS Manual § 513.6.1.1 provides in part:**

The applicant chooses a psychologist in the Independent Psychologist Network (IPN) and contacts the IP to schedule the appointment .... The Independent Psychological Evaluation (IPE) is used to make a medical eligibility determination.

**BMS Manual § 513.6.2 provides in part:**

To be medically eligible, the applicant must require the level of care and services provided in an ICF ... The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

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

**BMS Manual § 513.6.2.1 provides in part:**

If severe, Autism is a related condition which may make an individual eligible for the IDDW Program. Individuals with severe related conditions 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 ....

**BMS Manual § 513.6.2.2 provides in part:**

The applicant must have substantial deficits in at least three of the six identified major life areas:

- Self-care;
- Communication;
- Learning;
- Mobility;
- Self-direction; and
- Capacity for independent living ....

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 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 [emphasis added] be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review.

## **DISCUSSION**

The Appellant was assessed in 2014 and found eligible for IDDW. Upon slot-release, the Appellant was re-evaluated and pursuant to changes in the Appellant's diagnosis and functioning, the Appellant was found to be ineligible for IDDW. The Appellant's mother challenged that the Appellant's functioning impairments are severe and that she should be found eligible for IDDW.

Policy requires that IDDW participants have an eligible diagnosis and have substantial functioning deficits as established by relevant test scores and narrative descriptions contained in supporting documentation. Although the evidence demonstrated that the Appellant presents with delays and impairments, the documentation failed to establish that the Appellant has any substantial deficits assessed to be three standard deviations below the mean – as required by policy.

### *Diagnosis:*

The Respondent testified that the criteria for diagnosing Autism has changed since the Appellant's 2013 diagnosis. Upon slot-release, the Respondent testified that an ICAP assessment was conducted. The Appellant's service score was 49 and her service level was 4. The Respondent testified that a score range between 1 and 19 indicated an individual with the most significant needs, whereas, the Appellant's score fell between 40 and 59, which indicated the least significant level of need.

The 2019 Autism Screening was completed pursuant to the parent report. Scores indicated that a diagnosis of Autism was likely with a severity level of 3. The Respondent testified that Level 1 demonstrates the highest functioning and Level 3 demonstrates a more severe Autism diagnosis. The narrative of the IPE reflected that the Appellant had a diagnosis of Autism, Level 1 due to the totality of the Appellant's scores and performance on the IPE.

### *Functionality:*

The Appellant required prompting, encouragement, and general reminders to conduct self-care tasks. The Respondent testified that to be awarded a substantial delay, the Appellant must be unable to complete tasks. Whereas the appellant was physically able to complete self-care tasks with prompting, a substantial delay in the functional area of self-care was not established by the evidence.

The Appellant presented with "acceptable verbal receptive and expressive language skills" during the 2019 IPE. The Respondent testified that an individual presenting with a substantial delay in the functional area of receptive or expressive language would have very limited verbal ability, use augmented speech device, utilize sign language, or be totally non-verbal. Although the narrative

of the 2019 IPE demonstrates weakness in communication, a substantial delay in the functional area of communication was not established by the evidence.

The Appellant presented with borderline intellectual functioning during both the 2014 and 2019 IPE. The Respondent testified that borderline intellectual functioning is not an eligible diagnosis as it is not an intellectual disability which qualifies for IDDW eligibility. Although the Appellant scored below 55 in the area of reading in 2014, the Appellant was able to complete the 2019 Wide Range Achievement Test (WRAT 5) herself. To demonstrate a substantial deficit in the area of learning, the Respondent testified that the Appellant would have to score a 55 or below. The Appellant's lowest score was 72 in the area of math computation. Whereas the Appellant's scores failed to fall three standard deviations below the mean, a substantial delay in the functional area of learning was not established by the evidence.

The Appellant presented as able to ambulate without mechanical aid during the 2019 IPE. The Respondent testified that an individual presenting with substantial delay in the area of mobility would require a wheelchair and be unable to wheel themselves. Whereas the Appellant did not require use of a mobility device or assistance, a substantial delay in the functional area of mobility was not established by the evidence.

The Appellant demonstrated the ability to select activities such as watching television, playing music, or watching YouTube. The Respondent testified that an individual presenting with substantial delay in the area of self-direction would be totally unable to initiate activities or choose an active lifestyle or remain passive. Whereas the Appellant was able to initiate activities of her choosing, a substantial delay in the functional area of self-direction was not established by the evidence.

Teacher and parent forms were completed during the adaptive behavior assessment. The Respondent testified that to demonstrate substantial delay in a functioning area, the Appellant would have to score a 1 or 2. On the ABAS-3 parent form, only a score of 2 in the area of *communication* met this criteria. Policy requires that scores be corroborated by the narrative. As the ABAS-3 teacher form scaled score of 9 in the area of *communication* varied greatly from the parent assessment and the narrative of the IPE did not corroborate a substantial delay in the area of *communication*, a substantial delay could not be awarded. Even if the Appellant had met the criteria for significant delay in *communication* based solely on the parent assessment, significant delay in two other areas would still be required to meet the policy eligibility criteria. Although the 2019 IPE reflected that the Appellant presented with impaired capacity for independent living, the evidence failed to demonstrate a substantial delay.

The Appellant argued that she disagreed with the IPE completed by Dr. [REDACTED] however, policy provides that the Appellant is responsible for selecting the IP used to conduct the IPE relied upon to determine the Appellant's medical eligibility for IDDW. There are no exceptions provided in policy for disregarding the IPE based on the Appellant's disagreement with the IPE results; therefore, the narrative and adaptive behavior assessment results from the 2019 IPE must be considered in determining the Appellant's medical eligibility for IDDW. The Appellant's representative argued that the Appellant required prompts when shampooing her hair and required assistance with cutting food. While the Appellant's representative's report reflects that the

Appellant has functioning impairments, hygiene prompting and assistance cutting food are not indicative of severe impairment represented by the IPE narrative and testing results. This Hearing Officer is unable to disregard the policy requirement that substantial functioning deficits be established by relevant test scores and narrative descriptions contained in supporting documentation.

### **CONCLUSIONS OF LAW**

- 1) To meet medical eligibility for the I/DD Waiver Program, the Appellant must have an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits and require an ICF level of care.
- 2) The evidence failed to demonstrate that the Appellant has an eligible diagnosis of Intellectual Disability or a related condition which is severe.
- 3) The evidence failed to demonstrate that the Appellant has any substantial deficits based on three standard deviations below the mean in the areas of *self-care, learning, self-direction, receptive or expressive language, mobility, or capacity for independent living*.
- 4) The Respondent was correct to deny the Appellant's medical eligibility for the I/DD Waiver Program.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the decision by the Department to deny the Appellant medical eligibility for the I/DD Waiver Program.

ENTERED this day 31<sup>st</sup> day of July 2019.

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**Tara B. Thompson**  
State Hearing Officer