



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

June 20, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-1737

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Stacy Broce, BMS, WVDHHR
Janice Brown, KEPRO

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

██████, A JUVENILE

Appellant,

v.

Action Number: 19-BOR-1737

**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 13, 2019, on an appeal filed May 16, 2019.

The matter before the Hearing Officer arises from the April 29, 2019 decision by the Respondent to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by Linda Workman, Psychologist Consultant, PC&A/Bureau for Medical Services. The Appellant was represented by his mother, ██████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 I/DD Waiver Services Manual Chapter 513.6
- D-2 Notice of Decision dated April 29, 2019
- D-3 Independent Psychological Evaluation dated April 17, 2019
- D-4 Documentation from WVU Medicine
- D-5 Early Learning Reporting System: Pre-Kindergarten Family Report
- D-6 Individualized Education Program, ██████ County Board of Education

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) On April 29, 2019, the Appellant was notified (D-2) that his application for the I/DD Waiver Medicaid Program was denied because his condition does not meet required medical criteria for the program.
- 2) The Respondent conceded that the Appellant, currently age four, has a diagnosis of autism spectrum disorder, a potentially eligible diagnosis for the I/DD Waiver Program.
- 3) The Appellant's application was denied because the Respondent determined that, while the Appellant has a potentially eligible diagnosis, he does not demonstrate three (3) or more substantial adaptive deficits in the six (6) major life areas identified for I/DD Waiver eligibility.
- 4) The Respondent bases its eligibility determination for the I/DD Waiver Program, in part, on scaled scores on the Adaptive Behavior Assessment System, Third Edition (ABAS-3). Substantial deficits are defined as standardized scores of three (3) 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 I/DD normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. 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.
- 5) An individual who applies for I/DD Waiver Medicaid must exhibit substantial adaptive deficits in three (3) out of six (6) identified major life areas - *self-care, receptive or expressive language, learning, mobility, self-direction* and *capacity for independent living*. The Respondent considers scores of one (1) or two (2) as eligible scores in determining substantial adaptive deficits.
- 6) The Respondent conceded that the Appellant exhibits one (1) qualifying substantial adaptive deficit in the area of *receptive or expressive language*.
- 7) The Appellant received a score of two (2) in the area of *self-direction* on the ABAS-3 completed by his parent/primary caregiver, but a score of four (4) in *self-direction* on the ABAS-3 completed by his teacher/daycare provider. Therefore, the Respondent awarded no deficit to the Appellant in the area of *self-direction*. Narrative information included in the Appellant's Independent Psychological Evaluation (D-3) indicates that the Appellant engages in very few self-play related activities and is limited in the area of pretend play. He likes to be in sight of his mother.
- 8) The Appellant received a score of four (4) on the parent-caregiver assessment ABAS-3 in the area of *self-care*, and a score of one (1) in the area of *self-care* on the teacher/daycare provider form. Therefore, no deficit was awarded for *self-care*. Narrative information in Exhibit D-3 considers age-appropriate self-care skills (i.e., the Appellant's abilities

compared to those of other four-year-old children). This documentation states that the Appellant uses his fingers to eat and is capable of removing his clothes. He is incapable of dressing himself, is not yet properly toilet trained, and requires total assistance for bathing. No deficit was awarded based on the discrepancy in ABAS-3 scores and the Appellant's comparable abilities to children his age.

- 9) The Appellant received a score of seven (7) in motor skills on the ABAS-3 parent form, and a score of two (2) in motor skills on the ABAS-3 teacher/daycare provider form. As narrative information in Exhibit D-3 states that the Appellant ambulates without mechanical assistance, no deficit was awarded in the functional area of *mobility*.
- 10) The Appellant received a score of three (3) in social skills on the ABAS-3 parent form and a score of two (2) on the teacher/daycare provider form. Social is one of six subdomains included in the functional area of *capacity for independent living*. The other subdomains include home living, employment, health and safety, community and leisure activities. As no eligible scores were recorded in the remaining subdomains, no deficit was awarded for *capacity for independent living*.
- 11) The Appellant received ineligible ABAS-3 scores in functional pre-academics (*learning*), community use, school and home living, health and safety, and leisure.

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 513.6.2 (D-1) state:

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 may, if severe and chronic in nature, 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 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 the 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*.

West Virginia Medicaid Regulations, Chapter 513.6.2.2 (D-1) - An individual who applies for I/DD Waiver Services must have substantial adaptive deficits in three out of six identified major life areas - *self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living*. *Capacity for independent living* includes six sub-domains: home living, social skills, employment, health and safety, community and leisure activities.

Substantial deficits are defined as standardized scores of three (3) 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 I/DD normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. 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.

DISCUSSION

In order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality and need for active treatment criteria. While the Appellant met diagnostic criteria for the program, policy states that an individual who applies for I/DD Waiver services must exhibit substantial adaptive deficits in three (3) out of six (6) identified major life areas - *self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living*.

██████████ mother of the Appellant, questioned whether the Appellant should be engaging in more self-care activities for his age. She stated that he has limited mobility in his hands, has difficulty pulling off his clothes, and does not use eating utensils. Ms. ██████████ stated that she has struggled to find help for her son since he aged out of the Birth to Three Program. She testified that she cannot take the Appellant in public unless he is contained because he runs away, has attempted to get out of his seatbelt, etc. Ms. ██████████ stated that her son has many difficulties ahead of him in the future.

Ms. Workman testified that there is a wide range of what is considered normal progress for children in the Appellant's age group. She indicated that severity requirements must be met in order to qualify for the I/DD Waiver Program, and that a child's deficits in functionality - as compared to his peers - can become more apparent as the child ages.

Based on information provided during the hearing, documentation is insufficient to establish substantial adaptive deficits in three (3) of the six (6) major life areas required for participation in the I/DD Waiver Medicaid Program.

CONCLUSIONS OF LAW

To establish medical eligibility for the I/DD Waiver Medicaid Program, an applicant must meet the diagnostic, functionality and need for active treatment criteria. The individual must exhibit substantial adaptive deficits in three (3) of the six (6) major life areas identified in policy. As only one (1) substantial adaptive deficit could be identified for the Appellant, the Respondent's decision to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program is affirmed.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's action to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program.

ENTERED this 20th Day of June 2019.

**Pamela L. Hinzman
State Hearing Officer**