



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

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August 28, 2019



RE: [REDACTED] A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 19-BOR-1855

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: Nora Dillard, Bureau for Medical Services
Janice Brown, KEPRO

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 19-BOR-1855

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on July 24, 2019 on an appeal filed June 7, 2019.

The matter before the Hearing Officer arises from the April 15, 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 and Assessment (PC&A). The Appellant was represented by his mother, █. Appearing as a witness on behalf of the Appellant was █, █. All 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 15, 2019
- D-3 Independent Psychological Evaluation (IPE), dated March 24, 2019
- D-4 WVU Medicine Letter, dated March 1, 2019
- D-5 █ Speech Therapy Plan of Care, dated August 29, 2016
- D-6 █ Letter, dated March 11, 2019
- D-7 █ Progress Note, dated January 3, 2019
- D-8 █ Speech Therapy Initial Evaluation, dated August 22, 2016
- D-9 Education Program Team Meeting, dated March 3, 2019

Appellant's Exhibits:

- A-1 [REDACTED] Medicine Letter, dated July 15, 2019
- A-2 [REDACTED] Counseling Letter, dated July 16, 2019
- A-3 [REDACTED] Summary of Services, dated July 15, 2019
- A-4 [REDACTED] Medicine letter, dated June 11, 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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant applied for participation in the Medicaid I/DD Waiver Program (I/DDW).
- 2) On April 15, 2019, the Respondent issued a notice advising the Appellant that his I/DDW medical eligibility was denied due to documentation failing to support the presence of substantial adaptive deficits in three or more of six major life areas (Exhibit D-2).
- 3) When determining the Appellant's medical eligibility, reviewers considered the March 14, 2019 IPE, March 1, 2019 Letter, August 29, 2016 Speech Therapy Plan of Care, March 11, 2019 [REDACTED] Report, August 22, 2016 SLP Progress Note, August 22, 2016 Speech Therapy Initial Evaluation, and March 11, 2019 IEP (Exhibit D-2).
- 4) The Appellant had substantial limitations in *receptive or expressive language* and *capacity for independent living* (Exhibit D-2).
- 5) The Appellant has an eligible diagnosis (Exhibits D-3 and D-4).
- 6) On March 14, 2019, psychologist [REDACTED] conducted an Independent Psychological Evaluation (IPE) (Exhibit D-3).
- 7) The Appellant's mother provided IPE history information and was the reporter for the adaptive behavior scale (Exhibit D-3).
- 8) The Appellant was able to independently ambulate without any mechanical aid assistance (Exhibit D-3).
- 9) The Appellant's WRAT 5 results reflected scores ranging from 74 to 90 (Exhibit D-3).
- 10) The Appellant's ABAS-2019 parent form results reflected scaled scores of 1 in the areas of *Communication* and *Social*.
- 11) The Appellant's ABAS-2019 parent form results reflected scaled scores of 2 in the areas of *Health and Safety*, and *Leisure*.

- 12) The Appellant's ABAS-2019 parent form results reflected scaled scores of 3 in the areas of *Self-Direction* and *Home Living*.
- 13) The Appellant's ABAS-2019 parent form results reflected scaled scores of 4 in the area of *Community use*, *Functional Academics*, and *Self-care*.
- 14) The Appellant's ABAS-2019 teacher form did not demonstrate any substantial deficits (Exhibit D-3).
- 15) The Appellant requires prompting to complete hygiene activities but is physically able to shower without assistance (Exhibit A-1).
- 16) Appellant is physically able to prepare food in a limited scope and is capable of making Tuna Melt (Exhibit A-1).
- 17) The Appellant is able to participate in chores independently, mow the lawn, take out the trash and enjoys drawing (Exhibits A-1 and A-2).

APPLICABLE POLICY

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

In order for an applicant to be found eligible for the I/DD 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 I/DDW 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 75th 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 Respondent stipulated that the Appellant has a diagnosis of severe Autism, which qualifies as an eligible diagnosis. The evidence demonstrated that the Appellant had substantial limitations in *receptive or expressive language* and *capacity for independent living*. Policy requires substantial functioning deficits in at least three major life areas. As the Respondent only awarded the Appellant two substantial functioning deficits, the Appellant's medical eligibility was denied. To demonstrate that the Appellant's medical eligibility for the Medicaid I/DD Waiver Program was correctly denied, the Respondent had to prove by a preponderance of evidence that the Appellant should not have been awarded three or more substantial adaptive deficits.

To receive a substantial deficit in the area of *mobility*, the Respondent testified that the Appellant had to require mechanical assistance from a wheelchair and be unable to wheel himself. As the evidence demonstrates that the Appellant was able to ambulate independently, an additional deficit in the area of *mobility* cannot be awarded.

To demonstrate a substantial deficit in the area of *learning*, the Respondent testified that the Appellant had to demonstrate WRAT-5 scores of 55 or below. As the evidence demonstrated that the Appellant's scores exceeded scores of 55, an additional deficit in the area of *learning* cannot be awarded.

The Respondent's witness testified that ABAS-3 scores must be 1 or 2 to demonstrate a substantial functioning deficit in the less-than-one percentile as required by policy. The Respondent's evidence demonstrated discrepancy between the parent and teacher ABAS-3 scores. The Respondent's witness testified that even though the teacher scores were inconsistent with the parent scores, the Respondent awarded the Appellant deficits in the areas of *communication* and *social* due to supporting documentation narrative. The documentation narrative provided by Playworks demonstrated that the Appellant has a substantial deficit in the area of *communication* but did not demonstrate that deficits in other major life areas should be awarded. Policy requires that scores be corroborated by the narrative. Because the Appellant's ABAS-3 parent scores of 2 in *Health and Safety* and *Leisure* were not corroborated by the IPE narrative or supporting documentation, additional deficits could not be awarded.

The Appellant's evidence demonstrated that the Appellant requires prompting to complete hygiene activities but is physically able to shower without assistance. The Appellant's evidence demonstrated that the Appellant is physically able to prepare food in a limited scope and is capable of making Tuna Melt. Although the Appellant demonstrated limitations with appetite, received help from others when preparing food, and requires prompting to complete hygiene tasks, no evidence was entered to demonstrate that the Appellant had substantial delays in self-care. 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. As such, additional deficits could not be awarded in the area of *self-care*.

The Appellant's evidence established that the Appellant has the ability to independently complete chores including mowing the lawn and taking out the trash. The Appellant's evidence also reflected that the Appellant enjoys drawing. Although the evidence demonstrated that the Appellant requires prompting to conduct other chore and leisure activities, the evidence verifies that the Appellant has the ability to initiate activities and choose an active lifestyle or remain passive. Whereas the Appellant was able to initiate activities of his choosing, a substantial delay in the functional area of *self-direction* was not established by the evidence.

The Appellant's evidence demonstrated that the Appellant's clinical staff had determined that the Appellant presented with a variety of limitations "identified through standardized testing, non-standardized testing, interview and observation;" however, no evidence was entered to demonstrate relevant test scores or narrative to support that additional substantial deficits should be awarded.

CONCLUSIONS OF LAW

- 1) To be determined medically eligible for the Medicaid I/DD Waiver Program, the Appellant must demonstrate substantial deficits in at least three of the six identified major life areas.
- 2) The Appellant demonstrated substantial deficits in *receptive or expressive language and capacity for independent living*.
- 3) The preponderance of evidence failed to demonstrate that additional deficits should have been awarded.
- 4) As the Appellant only presented with two substantial deficits, the Respondent was correct to deny the Appellant's medical eligibility for the Medicaid 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 Medicaid I/DD Waiver Program

ENTERED this 28th day of August 2019.

Tara B. Thompson
State Hearing Officer