



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

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Cabinet Secretary

Board of Review
State Capitol Complex
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September 13, 2019

Jolynn Marra
Interim Inspector General

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 19-BOR-1896

Dear Ms. [REDACTED]

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-1896

**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 July 17, 2019, on an appeal filed June 17, 2019.

The matter before the Hearing Officer arises from the Respondent's May 30, 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 was represented by Kerri Linton. The Appellant was represented by his guardian, █. █ appeared as a witness for the Appellant. 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, dated May 30, 2019 |
| D-3 | Independent Psychological Evaluation, dated May 8, 2019 (evaluation date) |

Appellant's Exhibits:

- A-1 Written statement and notes on the Appellant's behalf
- A-2 Letter from [REDACTED], dated July 4, 2019
- A-3 [REDACTED] Patient Visit Notes
Visit dates: May 23, 2019 and June 19, 2019
- A-4 Medical records for the Appellant

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 May 8, 2019 psychological evaluation in conjunction with this application. (Exhibit D-3)
- 5) By notice dated May 30, 2019, (Exhibit D-2) the Respondent notified the Appellant that his 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," and indicated the only major life area determined to have met this designation was *Self-Direction*.
- 6) The functionality of the Appellant was assessed using the Adaptive Behavior Assessment System 3 (ABAS-3) results documented on the May 2019 psychological evaluation. The Appellant obtained test scores indicative of substantial deficits in four of the ABAS-3 subtests: *Self-Direction* (also a major life area), *Functional Academics* (corresponding with the major life area of *Learning*), and *Community Use and Health and Safety* (two sub-domains of the six comprising the major life area *Capacity for Independent Living*). (Exhibit D-3)

- 7) The ABAS-3 scores for the Appellant were based on ratings provided by the Appellant's mother. (Exhibit D-3)
- 8) The functionality of the Appellant in the major life area of *Learning* was additionally assessed using the Wide Range Achievement Test-4 (WRAT-4) results documented on the May 2019 psychological evaluation. The Appellant obtained standard scores on this test ranging from 64 to 79, and scores less than or equal to 55 are indicative of a substantial deficit. (Exhibit D-3)
- 9) The WRAT-4 was completed by the Appellant and his test scores directly reflect his performance on the test.
- 10) Ms. Linton testified that she not award the Appellant a substantial deficit in *Learning* because she placed more weight in the test completed by the Appellant (WRAT-4) than in the ratings provided by the Appellant's mother (ABAS-3).

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 in response to the decision of the Respondent to deny his application for the I/DD Waiver Program based on their finding that he 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 due to unmet functionality. The ABAS-3 scores for the Appellant show an adaptive behavior deficit in the major life area of *Self-Direction*. The Appellant's eligible test scores in *Community Use* and *Health and Safety* were insufficient to establish the three sub-domains of the *Capacity for Independent Living* necessary to show a substantial deficit in this major life area. The Appellant's results on the ABAS-3 are indicative of a substantial deficit in the area of *Learning*, but his results on the WRAT-4 do not support a substantial deficit in this area. The WRAT-4 results are given more weight because they directly reflect the test performance of the Appellant, while the ABAS-3 results are based on ratings provided by another person. Testimony was offered by the Appellant's family in support of his need for services, and evidence (Exhibits A-1, A-2, A-3, and A-4) was provided which described the Appellant's condition but was not specific enough to measure functionality as described in policy.

With only one substantial adaptive deficit (*Self-Direction*), the Appellant did not meet the functionality component of medical eligibility, and the Respondent was correct to deny the Appellant's application on this basis.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not establish substantial adaptive deficits in at least three of the six major life areas set by policy, the Appellant did not meet the required 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 September 2019.

**Todd Thornton
State Hearing Officer**