



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

October 23, 2019

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.:19-BOR-2337

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau for Medical Services
KEPRO

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

■, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 19-BOR-2337

**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 October 3, 2019, on an appeal filed September 5, 2019.

The matter before the Hearing Officer arises from the August 13, 2019, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. 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 Provider Manual §513.6
- D-2 Notice of Denial dated August 13, 2019
- D-3 Independent Psychological Evaluation dated June 29, 2019
- D-4 Neuropsychological Evaluation dated April 14, 2014
- D-5 Individualized Education Plan dated October 29, 2018
- D-6 Physical Therapy Evaluation dated October 22, 2018

Appellant's Exhibits:

- A-1 Appellant's Written Argument

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 applied for services under the I/DD Waiver Program.
- 2) The Respondent issued a Notice of Denial on August 13, 2019, advising that the Appellant's application was denied as three (3) or more substantial adaptive deficits in the major life areas were not identified by the documentation submitted (Exhibit D-2).
- 3) The Appellant met the diagnostic criteria for I/DD Waiver eligibility with a diagnosis of mild Intellectually Disability (Exhibit D-3).
- 4) The Respondent conceded that the Appellant was demonstrating a substantial adaptive deficit in the major life area of self-care (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive I/DD Waiver 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.

Diagnosis

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

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

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,
- Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three of these sub-domains must be substantially limited to meet the criteria in this major life area.

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 Intellectual Disability (ID) normative populations when ID 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 be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

Active Treatment

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

DISCUSSION

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, the functionality criteria of at least three (3) substantial adaptive deficits out of the six (6) major life areas, the need for active treatment, and a requirement of ICF/IID level of care.

The Appellant met the diagnostic criteria with a diagnosis of mild Intellectual Disability. However, the Respondent denied the Appellant's application for I/DD Waiver services as only one (1) substantial adaptive deficit in the major life areas were identified.

Policy defines a substantial adaptive deficit as a standardized score of three (3) standard deviations below the mean, or less than one (1) percentile. The presence of substantial deficits must be supported not only by the relevant test scores, but also by the narrative descriptions contained in the documentation submitted for review.

Kerri Linton, the Respondent's consulting psychologist, testified that the Adaptive Behavior Assessment System, Third Edition (ABAS-III) administered to the Appellant during the Independent Psychological Evaluation in March 2019 has a mean, or average score, of ten (10). An eligible score of 3 standard deviations below the mean of 10, or less than 1 percentile, is a score of a 1 or 2. Ms. Linton stated the only eligible score from the ABAS-III for the Appellant was in the area of self-care.

The Appellant's mother, [REDACTED], argued that the Appellant should have received deficits in the major life areas of receptive/expressive language, learning, self-direction and capacity for independent living.

Receptive/Expressive Language

The Appellant received a score of 5 in communication on the March 2019 ABAS-III. The administering psychologist noted that the Appellant was able to express her wants, needs and feelings, spoke in simple but complete sentences, answered simple questions, and exhibited mild articulation errors. A speech evaluation administered in May 2013 noted borderline skills with low-average expressive language and borderline receptive skills (Exhibit D-4). The Appellant receives speech therapy services in school and the October 2018 Individualized Education Plan documented that the Appellant's speech and language delays are developmentally inappropriate for her age (Exhibit D-5).

Learning

The Wide Range Achievement Test, Fourth Edition (WRAT-4) administered to the Appellant in March 2019 measured her academic achievements. The Appellant received a score of 80 in reading, a 69 in spelling and a 65 in math computation. The mean of the WRAT is 100, three standard deviations below the mean would be eligible scores of 55 or lower. The Appellant did not have eligible scores of three standard deviations below the mean as derived from the WRAT. Additionally, the Appellant received a score of 5 in functional academics on the ABAS-III, which failed to meet the criteria of three standard deviations below the mean (Exhibit D-3).

Self-Direction

The Appellant received a score of 4 in the area of self-direction on the ABAS-III. The administering psychologist noted the Appellant was able to make choices regarding food and clothing and to initiate activities of her preferred interest. The Appellant has difficulty following directions and cannot complete tasks without reminders and support (Exhibits D-3 and D-5).

Capacity for Independent Living

To receive a deficit in capacity for independent living, an individual must be substantially limited in at least three of the six sub-domains of this major life area. The ABAS-III scores in the six sub-domains were community use 7, home living 4, health and safety 3, leisure 5, and social 7. With no eligible scores in any of the sub-domains, a deficit in capacity for independent living was not established (Exhibit D-3).

Although delays in receptive/expressive language, learning, self-direction and capacity for independent living are clearly noted throughout the documentation submitted, the Appellant's delays do not meet the threshold of a substantial delay as defined in policy. The adaptive behavior tests administered to the Appellant did not yield eligible test scores of three standard deviations below the mean, except in the area of self-care. While it is documented that the Appellant is functioning in the low-average or average range in many of the major life areas, to be considered a substantial deficit, the Appellant's functional abilities would need to be in the extremely low range, consistent with functioning at less than one percentile than that of peers her age.

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) The Appellant met the diagnostic criteria with an eligible diagnosis of mild Intellectual Disability.
- 3) Policy requires that for the functionality criteria to be met, the applicant must demonstrate at least three substantial adaptive deficits of the six major life areas as determined by standardized test scores of three standard deviations below the mean, or less than one percentile, which must be supported by the narrative descriptions of the applicant's abilities.
- 4) The Respondent conceded that the Appellant was exhibiting a substantial adaptive deficit in self-care.
- 5) Based on the documentation submitted, the quantitative measure of the Appellant's adaptive behavior skills in self-direction, receptive/expressive language, learning and capacity for independent living did not meet the criteria as set forth in policy to be considered a substantial adaptive deficit.

- 7) With only one substantial adaptive deficit identified in the six major life areas, the Appellant does not meet functionality criteria to receive services under the I/DD Waiver Program.

DECISION

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

ENTERED this 23rd day of October 2019.

Kristi Logan
State Hearing Officer