



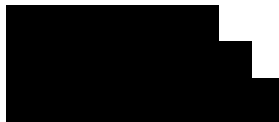
STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
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Jolynn Marra
Interim Inspector
General

February 21, 2019



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 18-BOR-2913

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: Sarah Clendenin, PC&A
Scott Hudson, PC&A
Angela Signore, Bureau for Medical Services

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 18-BOR-2913

**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 January 31, 2019, on an appeal filed December 17, 2018.

The matter before the Hearing Officer arises from the December 3, 2018 determination by the Respondent to deny the Appellant medical eligibility for the Intellectual Developmental Disabilities (IDD) Waiver Program.

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

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual § 511-511.2.4
- D-2 PC&A Notice, dated November 10, 2018
- D-3 PC&A Notice, dated November 13, 2018
- D-4 DHHR Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) Level of Care Evaluation, dated September 27, 2018
- D-5 █ County Schools Psychoeducational Report, evaluation dated September 7, 2001
- D-6 WV Department of Health Psychological Evaluation, dated October 15, 2018
- D-7 DHHR Social History, dated September 28, 2018
- D-8 West Virginia University (WVU) Medicine Admission History, dated September 16, 2018

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 was an applicant for IDD Waiver Program Services (Exhibit D-8).
- 2) BMS contracts with PC&A to determine medical eligibility for the IDD Waiver Program.
- 3) On December 3, 2018, the Respondent issued a notice advising the Appellant that he was denied for IDD Waiver Program eligibility due to lacking an eligible diagnosis and documentation supporting the presence of substantial adaptive deficits in three or more of the six major life areas identified for ICF/IID eligibility.
- 4) At age 11, results of the Wechsler Intelligence Scale for Children reflected that the Appellant's full-scale IQ was 77 and fell "in the Border to Impaired range of intellectual development and the 2nd percentile" (Exhibit D-5).
- 5) At age 11, the Appellant's adaptive behavior evaluation scale standard scores demonstrated adaptive skills in the sixth percentile (Exhibit D-5).
- 6) At age 19, neuropsych testing documentation reflected that the Appellant had a history of seizure disorder secondary to TBI (Exhibit D-9).
- 7) Neuropsych testing demonstrated that at age 19, the Appellant had a Full Scale IQ of 63. The narrative noted that the results should be "interpreted with caution" due to behavior observations and that the Appellant's "level of intellectual functioning is estimated to be in the borderline range" (Exhibit D-9).
- 8) In September 2018, the Appellant was 28-years-old (Exhibits D-4 through D-9).
- 9) On September 16, 2018, WVU Medicine's Admission History documentation demonstrated that the Appellant has a history of Autism Spectrum Disorder (ASD), Schizophrenia, Unspecified Depressive Disorder, and Intellectual Disability (Exhibit D-8).
- 10) In September 2018, an ICF/MR Level of Care Evaluation and a Social History was completed that indicated the Appellant had a history of Traumatic Brain Injury (TBI),

Seizures, Autism Spectrum Disorder (ASD), Intellectual Disability Disorder, Schizophrenia, and Depression (Exhibit D-4).

- 11) The September 27, 2018 ICF/MR Level of Care Evaluation reflected that the Appellant had an IQ of 63 and intellectual disability by history (Exhibit D-4).
- 12) On the 2018 ICF/MR Level of Care Evaluation, the physician indicated that the Appellant required an ICF/IID Level of Care (Exhibit D-4).
- 13) The October 15, 2018 psychological evaluation reflected the Appellant's aunt provided information to indicate the Appellant had a previous history of diagnosis of ASD, Unspecified Depressive Disorder, Schizophrenia, and Intellectual Disability (Exhibit D-6).
- 14) During the October 15, 2018 psychological evaluation, the Appellant was unable to complete the Stanford Binet Scales of Intelligence-5; therefore, the Slosson Intelligence test was administered with results indicating the Appellant presented with a Slosson IQ of 29, "Moderate intellectual deficits," and a diagnosis of Moderate Intellectual Disability was established (Exhibit D-6).
- 15) The October 15, 2018 adaptive skill area standard scores indicated "significant deficits across all areas of adaptive functioning" (Exhibit D-6).
- 16) On November 10, 2018, PC&A issued a notice to the Appellant requesting additional IEP and Previous Psychological Evaluations to be submitted (Exhibit D-2).
- 17) On November 13, 2018, PC&A issued a notice to the Appellant requesting additional IEP documentation to be submitted (Exhibit D-3).

APPLICABLE POLICY

BMS Manual §513.6.2 Applicant Eligibility and Enrollment Process provides that:

In order for an applicant to be found eligible for the IDD Waiver Program, they must require the level of care and services provided in an ICF/IID Individuals must meet criteria for medical eligibility not only by test scores, but also by narrative descriptions contained in the documentation.

In order to be eligible to receive IDD 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

BMS Manual §511.2.3 Medical Eligibility Criteria provides that:

In order to be eligible for ICF/IID placement, the applicant must meet the following criteria:

- 1) The applicant must [emphasis added] 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.
 - a. Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for ICF/ IID placement 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 persons with an intellectual disability, and requires services similar to those required for persons with an intellectual disability

- 2) The applicant must [emphasis added] have substantial adaptive deficits in three or more of the following six major life areas:
 - Self-care,
 - Communication,
 - Functional Academics (learning),
 - Mobility,
 - Self-Direction,
 - Capacity for independent living

Substantial adaptive deficit is defined as scores on standardized measures of adaptive behavior that are three standard deviations below the mean or less than one percentile when derived from non-ID normative populations, or in the average range or below the 75th percentile when derived from ID normative populations. Substantial deficits must be documented through both the narrative documents and the standardized measures of adaptive behavior.

DISCUSSION

The Appellant applied for I/DD Waiver Program eligibility and was denied on the basis that he lacked a qualifying diagnosis and substantial functioning deficits in at least three of the major life areas required by policy. To be eligible for the I/DD Waiver Program, the Appellant had to have

been diagnosed with a qualifying condition with substantial deficits manifested prior to age 22. Policy requires that the Appellant must demonstrate substantial adaptive deficits in three or more of the six major life areas.

During the hearing, the Appellant's representative argued that the Appellant's functioning has declined since his initial childhood assessments, that he demonstrates substantial adaptive deficits, and should be determined eligible for I/DD Waiver Program services. The Respondent had to prove by a preponderance of evidence that the Appellant did have an eligible diagnosis with concurrent substantial deficits prior to age 22, as required by policy. The evidence reflected that the Appellant had an IQ of 63 and Intellectual Disability diagnosis by history; however, the 2018 testing reflected that the Appellant had a Slosson IQ of 29, Moderate Intellectual Disability diagnosis. The Respondent testified that due to this conflicting information, additional documentation was requested to assess the validity of the Appellant's diagnosis.

At the time the 2018 assessments were completed, the Appellant was 28-years-old. The results of the 2018 testing established the diagnosis of Moderate Intellectual Disability and reflected that the Appellant had "significant deficits across all areas of adaptive functioning." Although 2018 documentation reflected that the Appellant had a history of Intellectual Disability and related diagnoses of Autism Spectrum Disorder (ASD) and Traumatic Brain Injury (TBI), supporting diagnostic documentation was not provided to corroborate that the Appellant obtained these diagnoses prior to age 22. The documentation demonstrated that at age 11, the Appellant presented with standard scores in the sixth percentile. To be eligible for I/DD Waiver Program services, the Appellant's scores had to demonstrate that his adaptive behavior scores were three standard deviations below the mean or less than one percentile. The scores represented in the Respondent's evidence demonstrate that the Appellant's adaptive behavior scores exceeded this criteria. Further, the assessment did not include an Axis II diagnosis of Intellectual Disability.

At age 19, the Appellant completed neuropsych testing which resulted in an assessment of a full scale IQ of 63; however, the narrative notes that the results should be "interpreted with caution" due to behavior observations and that the Appellant's "level of intellectual functioning is estimated to be in the borderline range." The assessment did not include an Axis II diagnosis of Intellectual Disability. Narrative of the document reflected that the Appellant's scores were affected by psychiatric illness. Policy requires that impairments of intellectual functioning be for reasons other than mental illness.

The Respondent provided the Appellant with two opportunities to submit additional information to corroborate the existence of a qualifying diagnosis and functioning deficits prior to age 22. The evidence reflected that the Appellant was diagnosed with ASD at age nine and that he had previously been diagnosed with TBI; however, no corroborating diagnostic evidence was provided to reflect that the Appellant was diagnosed with ASD or TBI. Absent a qualifying diagnosis established prior to age 22, the Appellant's diagnosis and adaptive deficits reflected on the 2018 assessment could not be considered when determining I/DD Waiver Program eligibility.

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 severe and chronic disability with concurrent substantial deficits prior to age 22 and require an ICF level of care.
- 2) The preponderance of evidence failed to demonstrate that the Appellant had an eligible diagnosis of Intellectual Disability or related condition which is severe prior to age 22.
- 3) The Appellant did not require an ICF level of care.
- 4) The Appellant is not medically eligible for the I/DD Waiver Program.
- 5) The Respondent correctly denied the Appellant's application 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's application for the I/DD Waiver Program.

ENTERED this 21st day of February 2019.

Tara B. Thompson
State Hearing Officer