



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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March 4, 2021

Jolynn Marra  
Interim Inspector General



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 21-BOR-1073

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.: 21-BOR-1073**

**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 February 17, 2021, on an appeal filed January 15, 2021.

The matter before the Hearing Officer arises from the Respondent's October 8, 2020 decision and December 28, 2020 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 Linda Workman. The Appellant was represented by his mother, █, and father, █. 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 December 21, 2020
- D-3 Independent Psychological Evaluation  
█, MS  
Evaluation date: November 17, 2020

- D-4 Adaptive Behavior Assessment System, Third Edition  
Score Summary, dated November 17, 2020
- D-5 Letter from [REDACTED], MD, dated November 2, 2020
- D-6 [REDACTED] – Evaluation Visit Note  
[REDACTED], MOTR/L  
Evaluation date: October 30, 2020
- D-7 [REDACTED] – Evaluation Visit Note Addendum  
[REDACTED], MOTR/L  
Evaluation date: October 30, 2020
- D-8 Independent Psychological Evaluation  
[REDACTED], Licensed Psychologist  
Evaluation date: September 16, 2020
- D-9 Notice of Decision, dated October 8, 2020

**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 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) Linda Workman, a licensed psychologist employed by PC&A, made the eligibility determinations regarding the Appellant.
- 4) The Respondent denied the Appellant's application for the I/DD Waiver Program in a notice dated October 8, 2020 (Exhibit D-9).
- 5) The Appellant requested a second medical evaluation and new determination of eligibility.

- 6) The Respondent reviewed the Appellant's second medical evaluation and issued a second denial notice dated December 21, 2020 (Exhibit D-2).
- 7) The Respondent noted on its October 2020 denial letter (Exhibit D-9) that the Appellant was denied because, "Documentation provided for review does not indicate an eligible diagnosis of either Intellectual Disability or a Related Condition which is severe. Further, the documentation does not suggest the need for an ICF/IID level of care. Significant discrepancies are present between the present evaluation and the historical data provided for review."
- 8) The December 2020 denial letter (Exhibit D-2) from the Respondent to the Appellant reads, in pertinent part, "Documentation provided for review does not substantiate an eligible diagnosis of either Intellectual Disability or a Related Condition which is severe."
- 9) The September 2020 psychological evaluation (Exhibit D-8) of the Appellant by [REDACTED], Licensed Psychologist, provided the following diagnoses for the Appellant: Attention Deficit Hyperactivity Disorder, Combined Type; Autism, Social Level 2, Requiring Substantial Support, Repetitive Level 2, Requiring Substantial Support; Developmental Coordination Disorder, By History; and, Duplication of a Long Arm of Chromosome 9.
- 10) Autism screening of the Appellant was performed during the September 2020 evaluation (Exhibit D-8) using the Gilliam Autism Rating Scale – Third Edition (GARS-3).
- 11) The GARS-3 was completed by the Appellant's parents for the September 2020 evaluation.
- 12) The Appellant's GARS-3 scores from the September 2020 evaluation (Exhibit D-8) were 100 and 102 for an Autism Index incorporating 4 scores and 6 scores, respectively. These scores correspond with a Severity Level of 2 and 3, respectively.
- 13) The November 2020 (Exhibit D-3) psychological evaluation of the Appellant by [REDACTED], MS, provided the following diagnoses for the Appellant: Autism Spectrum Disorder requiring substantial support (level 2); Attention deficit hyperactivity disorder, combined type; Obsessive-compulsive disorder, unspecified type; and, Chromosomal abnormality.
- 14) Autism screening of the Appellant was performed during the November 2020 evaluation (Exhibit D-3) using the Childhood Autism Rating Scale – Second Edition - HF (CARS).
- 15) The Appellant's parents were the informants for the Autism rating scale of the Appellant during the November 2020 evaluation. (Exhibit D-3, page 6 of 6)
- 16) The Appellant's CARS score from the November 2020 evaluation was 44.5, which is noted to "...indicate severe symptoms of autism spectrum disorder." (Exhibit D-3)

- 17) The Appellant was evaluated using the Adaptive Behavior Assessment System – 3<sup>rd</sup> Edition (ABAS-3) on the September 2020 psychological evaluation. (Exhibit D-8)
- 18) The Appellant was evaluated using the Adaptive Behavior Assessment System – II (ABAS-2) on the November 2020 psychological evaluation. (Exhibit D-3)
- 19) Ms. Workman testified that eligible scores from the ABAS are “scaled scores” or “standard scores” of one (1) or two (2).
- 20) The Appellant obtained ABAS scores in the skill area of *Functional Academics* of two (2) and one (1) on the September 2020 (Exhibit D-8) and November 2020 (Exhibit D-3) evaluations, respectively.
- 21) The Appellant was directly tested using the Wide Range Achievement Test – Fourth Edition (WRAT-4) as part of the September 2020 evaluation (Exhibit D-8). This instrument is noted as a “...measure of basic academic skills in reading, spelling, and mathematics.”
- 22) The Appellant obtained the following WRAT-4 standard scores: Word Reading, 99; Sentence Comprehension, 107; Spelling, 121; Math Computation, 89; Reading Composite, 103. (Exhibit D-8)
- 23) The Appellant was tested using the Wide Range Achievement Test – 5 (WRAT-5) during the November 2020 evaluation (Exhibit D-3) and obtained the following standard scores: Word Reading, 106; Spelling, 115; Math Computation, 91; Sentence Comprehension, 100; Reading Composite, 103.
- 24) The discussion accompanying the WRAT-5 scores noted they “...indicate average academic functioning...” (Exhibit D-3)
- 25) The Appellant’s ABAS scores (Exhibit D-3) in the *Social* skill area were one (1) on both the September 2020 and the November 2020 evaluations. (Exhibits D-3, D-8)
- 26) The Appellant’s mother testified that the Appellant participates in social activity including playing football.
- 27) Narrative regarding the Appellant’s Socialization from the November 2020 (Exhibit D-3) evaluation reads, “he has one or more friends, and keeps a stable group of friends, is well-liked by others his own age, and displays care for younger children. He sometimes has good relationships with parents and other adults and says thank you when given a gift.”
- 28) The Appellant also obtained ABAS scores of one (1) in the area of *Self-Care* on both psychological evaluations. (Exhibit D-3, D-8)

- 29) Narrative regarding the Appellant in the area of *Self-Care* from the September 2020 (Exhibit D-8) evaluation reads, “He can bathe independently but either uses too much shampoo or forgets to use shampoo. He cannot fully dress himself. He puts on his hoodie, pants, and underwear although, he requires verbal prompting to complete this task. Moreover, he cannot close buttons or snaps and he cannot rotate his toothbrush when brushing his teeth.”
- 30) Narrative regarding the Appellant in the area of *Self-Care* from the November 2020 (Exhibit D-3) evaluation reads, “[Child █████] closes and locks the door before using public restrooms. He sometimes uses a fork to eat solid food, uses restroom [*sic*] at home without help, drinks liquids without spilling, puts shoes on the correct feet, and eats a variety of foods.”
- 31) Neither psychological evaluation of the Appellant (Exhibit D-3, D-8) noted a recommendation that the Appellant requires an ICF/IID level of care. The November 2020 evaluation (Exhibit D-3) noted a recommendation that the Appellant “...continue in his special education placement.”

### **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 §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.”

The policy lists Autism as an example of a potentially eligible diagnosis, “if severe and chronic in nature.”

### **DISCUSSION**

The Appellant requested a fair hearing to appeal the Respondent’s decision to deny his application for the I/DD Waiver Program based on its 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 Appellant applied for the I/DD Waiver Program and was denied in an October 8, 2020 notice. The Appellant requested a second medical evaluation and was denied again on December 21, 2020.

Both denial notices to the Appellant provide the basis for denial as diagnostic. The Appellant has a potentially eligible diagnosis of Autism. However, this diagnosis must be “severe and chronic in nature.” Test scores for the Appellant presented the Appellant as near the threshold for designation as severe, but the evaluating psychologist for both evaluations of the Appellant provided diagnoses noting the Appellant’s Autism as a Level 2, which is not characterized as “severe.”

Testing instruments used to assess the severity of the Appellant’s Autism and his functionality were inconsistent with testimony provided and the narratives from the evaluations. The Appellant was rated by his parents in the area of *Functional Academics*, and received scores reflecting adaptive behavior in this area at or near the lowest percentile. Direct testing of the Appellant revealed academic performance scores clustered around the mean. The Appellant was rated in a way that resulted in the lowest possible standard score for the *Social Capacity for Independent Living*, but testimony and narrative revealed that the Appellant plays football and has a stable group of friends. The Appellant’s ABAS scores for *Self-Care* were also one (1) on both evaluations, but testimony and narratives were also inconsistent in this area. The Appellant was described as at least partly independent in this area, performing some tasks but requiring some assistance or prompting to complete them. Testimony that the Appellant regularly has difficulty properly using the restroom is contradictory to the narratives describing him as capable of using public restrooms and the restroom at home without help.

Based on the inconsistencies between parent-rated instrument scores and direct testing of the Appellant, and the inconsistencies between the instrument scores and the narrative descriptions of the Appellant, these scores are not reliable for establishing the severity of the Appellant’s Autism diagnosis. Both evaluating psychologists for the Appellant diagnosed his Autism with a severity level of 2, which is not characterized as “severe” for purposes of I/DD Waiver medical eligibility.

Without an eligible diagnosis which is chronic and severe in nature, the Respondent was correct to deny the Appellant’s application for the I/DD Waiver Program.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant does not have a diagnosis of intellectual disability or a related condition which is severe and chronic in nature, the Appellant has not met the diagnostic 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 March 2021.**

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**Todd Thornton  
State Hearing Officer**