



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

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Cabinet Secretary

Board of Review
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March 26, 2021

Jolynn Marra
Interim Inspector General



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 21-BOR-1217

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-1217

**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 March 11, 2021, on an appeal filed February 10, 2021.

The matter before the Hearing Officer arises from the Respondent's December 8, 2020 decision and January 21, 2021 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 her mother, █. Testifying on behalf of the Appellant was █. 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 January 21, 2021
- D-3 Independent Psychological Evaluation
█, M.A.
Evaluation date: January 4, 2021

- D-4 Independent Psychological Evaluation
 [REDACTED], Ph.D.
 Evaluation dates: November 16, 2020, December 1, 2020
- D-5 Notice of Decision, dated December 8, 2020
- D-6 Adaptive Behavior Assessment System, Third Edition (ABAS-3)
 Teacher Form
 Score Summary

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) Kerri Linton, 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 December 8, 2020 (Exhibit D-5).
- 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 January 21, 2021 (Exhibit D-2).
- 7) The Respondent noted on both the December 2020 denial letter (Exhibit D-5) and the January 2021 denial letter (Exhibit D-2) that the Appellant was denied because, "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."

- 8) On both notices (Exhibits D-2 and D-5), the Respondent noted that the Appellant was found to have demonstrated “substantial limitations” in one (1) of the major life areas, *Receptive or Expressive Language*.
- 9) The Appellant’s functionality was evaluated using the Adaptive Behavior Assessment System – 3rd Edition (ABAS-3) on the Independent Psychological Evaluation conducted by [REDACTED], Ph.D. (Exhibit D-4). Ms. Linton testified that eligible scores from this instrument are “scaled scores” or “standard scores” of one (1) or two (2).
- 10) The Appellant’s ABAS-3 scores (Exhibit D-4) demonstrated substantial adaptive deficits in the skill areas of Communication, and Health and Safety. These ABAS-3 skill areas correspond with the major life areas (for I/DD Waiver eligibility) of *Receptive or Expressive Language*, and *Capacity for Independent Living*, respectively.
- 11) The Appellant’s ABAS-3 score in the skill area (and sub-domain) of Health and Safety is only one of the sub-domains of *Capacity for Independent Living*. The Appellant did not receive scores indicative of substantial adaptive deficits in any of the other skill areas corresponding with the other sub-domains of *Capacity for Independent Living* (Exhibit D-4).
- 12) The Appellant was also evaluated in January 2021 (Exhibit D-3) utilizing the ABAS-3, which resulted in eligible scores of one (1) or two (2) in all ABAS-3 skill areas except *Community Use*.
- 13) The ABAS-3 Discussion section from the January 2021 (Exhibit D-3, page 5 of 7) Independent Psychological Evaluation of the Appellant reads, in part, “The ratings are significantly lower than the scores from her most recent psychological evaluation in the fall of last year. The reasons for the disparity are unknown and her previous ratings are likely most representative of her adaptive functioning.”

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 (6) major life areas – self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living. The capacity for independent living domain is further divided into six (6) sub-domains – home living, social skills, employment, health and safety, community, and

leisure. Policy requires a minimum of three (3) 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 to appeal the Respondent’s decision to deny her applications for the I/DD Waiver Program based on its findings that she 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 a December 8, 2020 notice. The Appellant requested a second medical evaluation and was denied again on January 21, 2020. Testimony from the Respondent and both denial notices to the Appellant provide the basis for these denials as functionality.

The functionality of the Appellant was assessed using the ABAS-3 during the Independent Psychological Evaluation (IPE) conducted by [REDACTED], Ph.D., resulting in scores which were not in the range necessary to establish “substantial limitations” in in three (3) of six (6) major life areas set by I/DD Waiver policy. These initial ABAS-3 scores showed the Appellant was substantially limited in *Receptive or Expressive Language*. The Appellant demonstrated substantial limitation in one sub-domain of the *Capacity for Independent Living* domain, which was insufficient to meet the policy requirement for at least three (3) of six (6) sub-domains.

The ABAS-3 scores from the second medical evaluation changed drastically from the first, resulting in eligible scores in all skill areas but one. The ABAS-3 scores from the second medical evaluation are considered less reliable because of the discussion from the second IPE indicating “...previous ratings are likely most representative of her adaptive functioning,” due to this unknown discrepancy.

The Appellant’s mother testified that she is with the Appellant in the morning, and reported the Appellant can dress herself, groom herself, and use the restroom to an extent, but that she requires assistance or prompting in these areas. The Appellant’s mother testified the Appellant is at risk due to her history with choking and elopement. [REDACTED], a friend of the Appellant, also testified the Appellant has eloped in the past and that she wanders around undressed or dressed inappropriately.

With only one reliable set of test scores regarding the Appellant’s functionality, and those scores failing to demonstrate the necessary I/DD policy criteria of three (3) of six (6) major life areas, the Respondent was correct to deny the Appellant’s applications for the I/DD Waiver Program.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not demonstrate substantial limitations in at least three (3) of the six (6) major life areas, the Appellant has not met the 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 decisions to deny the Appellant's application for the I/DD Waiver Program due to unmet medical eligibility.

ENTERED this ____ Day of March 2021.

Todd Thornton
State Hearing Officer