



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Jolynn Marra  
Interim Inspector  
General

March 29, 2021



RE: [REDACTED], A MINOR v. WVDHHR  
ACTION NO.: 21-BOR-1220

Dear [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, MLS  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Stacy Broce, Bureau for Medical Services  
Janice Brown, KEPRO  
Kerri Linton, Psychological Consultation & Assessment

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

█, A MINOR,

**Appellant,**

v.

**ACTION NO.: 21-BOR-1220**

**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 minor. 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 March 18, 2021 on an appeal filed with the Board of Review on February 11, 2021.

The matter before the Hearing Officer arises from the Respondent's December 21, 2020 denial of the Appellant's medical eligibility for the Medicaid Intellectual/Developmental Disabilities Waiver (I/DDW) Program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation & Assessment. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual §§ 513.6 through 513.6.4
- D-2 BMS Notice, dated December 21, 2020
- D-3 Independent Psychological Evaluation, dated December 16, 2020
- D-4 █ Autism Spectrum Disorder Diagnostics, dated May 6 and May 13, 2015
- D-5 █ Autism Spectrum Disorder Diagnostics Autism Diagnostic Observation Schedule (ADOS-2) and Gilliam Autism Rating Scale-Second Edition (GARS-3) Summary Report, dated May 13, 2015
- D-6 BOT 2, dated May 6, 2015
- D-7 Education Center at █ Individualized Education Program (IEP), dated December 4, 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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) The Appellant submitted an application for Medicaid I/DDW eligibility.
- 2) On December 21, 2020, the Respondent issued a notice advising the Appellant that he was ineligible for I/DDW because documentation provided for review did not indicate the presence of an eligible diagnosis of either Intellectual Disability or a related condition which is severe (Exhibit D-2).
- 3) The Respondent's determination was based on review of a December 16, 2020 IPE; May 6 and May 13, 2015 Autism Spectrum Disorder Diagnostic by [REDACTED], M.D., FAAP; May 13, 2015 ADOS-2 and GARS-3 Summary Report by [REDACTED], MA, CCC-SLP; May 6, 2015 BOT 2 by [REDACTED], PT, MPT; and December 4, 2020 [REDACTED] IEP (Exhibit D-2).
- 4) The Appellant has a diagnosis of Autism Spectrum Disorder, Level II (Exhibits D-3 through D-5, and D-7).
- 5) The Appellant had substantial adaptive deficits in at least three of the six major life areas (Exhibit D-3).

**APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual § 513.6 provides in part:**

In order for an applicant to be found eligible for the I/DD Wavier Program, they must meet medical eligibility ... Medical eligibility is determined by the Medical Eligibility Contract Agent (MECA) through a review of the IPE completed by a member of the Independent Psychologist Network.

**BMS Manual § 513.6.1.1 provides in part:**

The applicant chooses a psychologist in the Independent Psychologist Network (IPN) and contacts the independent psychologist (IP) to schedule the appointment .... The Independent Psychological Evaluation (IPE) is used to make a medical eligibility determination.

**BMS Manual § 513.6.2 provides in part:**

To be medically eligible, the applicant must require the level of care and services provided in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF) as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history .... The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for treatment; and Requirement of ICF/IID Level of Care

**BMS Manual § 513.6.2.1 provides in part:**

The Applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested prior to age 22.

If severe and chronic in nature, Autism is a related condition which may make an individual eligible for the I/DDW Program. Individuals with severe related conditions 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 ....

**DISCUSSION**

The Respondent denied the Appellant's medical eligibility for Medicaid I/DDW due to the Appellant not having an eligible diagnosis. The Appellant's representative argued that the Appellant had significant functioning impairment related to his Autism diagnosis, would benefit from I/DDW services, and should be determined eligible.

The Respondent bears the burden of proof and had to prove by a preponderance of evidence that the Appellant is not medically eligible for I/DDW due to lacking an eligible diagnosis. To be medically eligible for I/DDW, the policy requires that the applicant have a diagnosis of intellectual disability or a related condition which is severe. The policy specifies that if severe and chronic in nature, Autism is a related condition which may make an individual eligible for I/DDW.

The Respondent testified that to meet the severity level for I/DDW medical eligibility, the Appellant had to have a diagnosis of Autism, Level III. During the hearing, the Appellant's representative testified the Appellant has historically had an Autism, Level II diagnosis and is still at the same level. The evidence corroborated that the Appellant has an Autism, Level II diagnosis. No evidence was entered to establish that the Appellant has an Autism, Level III diagnosis,

intellectual disability, or another related condition which is severe. The Appellant's diagnosis did not meet the criteria for a severe related condition.

During the hearing, the Respondent stipulated that the documentation verified substantial adaptive deficits in at least three of the six major life areas required for I/DDW eligibility. However, because the Appellant lacked an eligible diagnosis, the Appellant is not medically eligible for the I/DDW program.

### **CONCLUSIONS OF LAW**

- 1) To meet medical eligibility for the Medicaid I/DDW Program, the Appellant must have an intellectual disability or a related condition which is severe.
- 2) To meet criteria for a related condition which is severe, the Autism diagnosis must be Level III.
- 3) The evidence failed to demonstrate that the Appellant has an eligible diagnosis of intellectual disability or a related condition which is severe.
- 4) The Respondent correctly denied the Appellant medical eligibility for the Medicaid I/DDW Program.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

ENTERED this 29<sup>th</sup> day of March 2021.

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**Tara B. Thompson, MLS**  
State Hearing Officer