



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

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Board of Review
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Jolynn Marra
Interim Inspector
General

April 21, 2021



RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-1330

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, MLS
State Hearing Officer
State Board of Review

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

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

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-1330

**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 ██████████. 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 April 14, 2021 on an appeal filed with the Board of Review on March 8, 2021.

The matter before the Hearing Officer arises from the Respondent's December 9, 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, Psychologist, Psychological Consultation and Assessment. The Appellant appeared *pro se* by his mother, ██████████. Appearing as witnesses on behalf of the Appellant were ██████████, the Appellant's brother, and ██████████ (hereafter, Ms. ██████████), the Appellant's former Special Education Teacher. All 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 9, 2020
- D-3 Independent Psychological Evaluation (IPE), dated October 27, 2020

Appellant's Exhibits:

- A-1 Handwritten Letter, signed by ██████████; Disability Determination Section Notice, dated February 24, 1988

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) An application for Medicaid I/DDW eligibility was submitted on the Appellant's behalf.
- 2) On December 9, 2020, the Respondent issued a notice advising the Appellant that he was ineligible for I/DDW because documentation provided for review did not include records from the developmental period (prior to the age of 22) (Exhibit D-2).
- 3) The December 9, 2020 notice further specified that an eligible diagnosis such as Intellectual Disability with concurrent substantial adaptive deficits must be present in the developmental period to qualify for I/DDW (Exhibit D-2).
- 4) The IPE conducted on October 27, 2020 reflected that the Appellant had a diagnosis of Moderate Intellectual Disability (Exhibit D-3).
- 5) The Appellant was age 51 and 11 months at the time of the October 27, 2020 IPE.

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 § 513.6.2 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/IDD 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.

DISCUSSION

The Respondent denied the Appellant's medical eligibility for Medicaid I/DDW because the submitted documentation failed to verify the Appellant had an eligible diagnosis before he was age 22. The Appellant's representative argued that all family records of the Appellant's diagnosis—identified prior to age 22— were destroyed in a house fire and that further physician and academic records were unattainable due to the respective offices no longer retaining the Appellant's records.

To be medically eligible for I/DDW, the policy requires that before age 22, the applicant must be diagnosed with an intellectual disability or a related condition that is severe. The Respondent bears the burden of proof and had to prove by a preponderance of evidence that the Appellant is medically ineligible based on the absence of an eligible diagnosis that manifested before age 22.

During the hearing, the Appellant's witnesses testified that the Appellant received special education services and had an IEP while in school. Ms. [REDACTED] testified that she believed the Appellant was diagnosed with a developmental disability when she was his special education teacher in 1982. Although the witness testimony indicated the possibility of a presence of intellectual disability before the Appellant was 22 years old, no documented evidence was submitted to verify that a diagnosis existed during the Appellant's developmental period (before age 22).

The Appellant's witnesses testified that significant attempts were made to obtain the Appellant's records but due to his previous physician's retirement and other barriers in obtaining academic records, no documentation could be obtained to verify the existence of the Appellant's diagnosis. While the explanation is reasonable, the policy does not specify an exception to grant I/DDW eligibility for applicants with unverified diagnoses. Therefore, the Respondent's action to deny the Appellant medical eligibility for I/DDW must be affirmed.

CONCLUSIONS OF LAW

- 1) To be medically eligible for I/DDW, the policy requires that the applicant must be diagnosed with intellectual disability or a related condition which is severe before age 22.
- 2) The preponderance of evidence failed to verify that the Appellant manifested an eligible diagnosis of intellectual disability or a related condition which is severe before he was age 22.

- 3) The Respondent's action to deny the Appellant medical eligibility for the Medicaid I/DDW Program was correct.

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 21st day of April 2021.

Tara B. Thompson, MLS
State Hearing Officer