



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
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Jolynn Marra  
Interim Inspector General

June 3, 2021



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR  
ACTION NO.: 21-BOR-1403

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,

Angela D. Signore  
State Hearing Officer  
State Board of Review

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

cc: Kerri Linton, Psychological Consultation & Assessment  
Sarah Clendenin, Psychological Consultation & Assessment  
Janice Brown, KEPRO

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**ACTION NO.: 21-BOR-1403**

**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 April 28, 2021, on an appeal filed March 23, 2021.

The matter before the Hearing Officer arises from the February 9, 2021 determination by the Respondent to deny the Appellant's medical eligibility for services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

At the hearing, the Respondent appeared by Kerri Linton, Consulting Psychologist for the Bureau for Medical Services (BMS). The Appellant was represented by Sheila Hannah, Case Manager, CPS (Child Protective Services). Appearing as a witness for the Appellant was █, Clinical Supervisor, █. 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- 513.6.4
- D-2 DHHR BMS Notice, dated February 09, 2021
- D-3 Independent Psychological Evaluation (IPE), dated January 12, 2021
- D-4 Forensic Psychological Evaluation completed by █, dated May 23, 2020
- D-5 █ Report of Psychological Evaluation completed by █, dated May 23, 2019
- D-6 █ Initial Treatment Plan completed by █, dated October 17, 2019

- D-7 [REDACTED] Master Treatment Plan, dated October 24, 2019  
D-8 [REDACTED] Behavior Management Plan, dated October 24,  
2019  
D-9 Physician Letter signed by [REDACTED], dated April 21, 2020  
D-10 [REDACTED] Psychological Summary completed by [REDACTED]  
[REDACTED], dated January 11, 2020  
D-11 Highland Hospital Discharge Summary, dated December 13, 2019  
D-12 [REDACTED] Admission Assessment by [REDACTED], dated  
December 06, 2019  
D-13 [REDACTED] Assessment by [REDACTED], dated December 06, 2019  
D-14 [REDACTED] Evaluation by [REDACTED], dated December 06, 2019  
D-15 Initial Intake by [REDACTED], dated June 30, 2020  
D-16 [REDACTED] Master Treatment Plan, dated July 20, 2020  
D-17 IEP Amendment, dated October 19, 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 applied for the Medicaid I/DD Waiver (IDDW) Program. (Exhibit D-2)
- 2) The Respondent, through the Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDDW Program, including eligibility determination. (Exhibit D-2)
- 3) On January 12, 2021, [REDACTED], a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-3)
- 4) The January 12, 2021 IPE lists diagnoses of Autism Spectrum Disorder, Level 1; Attention Deficit Hyperactivity Disorder (ADHD); Complicated Bereavement; Neglect of Child (victim); and Specific Learning Disorder (mathematics). (Exhibit D-3)
- 5) On February 09, 2021, the Respondent issued a notice advising the Appellant that his application for IDDW Program eligibility was denied due to lacking an eligible diagnosis of intellectual disability or a related condition which is severe. The notice offered further reasons for denial indicating that submitted documentation did not support the presence of substantial adaptive deficits in three or more of the six major life areas. (Exhibit D-2)

- 6) The February 09, 2021 notice reflected that the Appellant was found to lack substantial adaptive deficits in the areas of self-care, learning, self-direction, receptive or expressive language, mobility, and capacity for independent living. (Exhibit D-2)
- 7) The Respondent's February 09, 2021 denial was based on "1/12/21 IPE; 5/15/2020 Forensic Psychological Evaluation by [REDACTED], Psy.D., and [REDACTED], Ph.D.; 5/23/19 Report of Psychological Evaluation by [REDACTED], MA, Ed.S.; 10/17/19 Initial Treatment Plan from [REDACTED]; 10/24/19 [REDACTED] Master Treatment Plan; 10/24/19 [REDACTED] Behavior Management Plan; 4/21/2020 Letter from [REDACTED], M.D.; 1/11/2020 Psychological Summary by [REDACTED], B.S. Team Leader; 12/13/19 Discharge Summary from Highland [REDACTED] Hospital; 12/6/19 Admission Assessment by [REDACTED]; 12/6/19 Assessment by [REDACTED], NP; 12/7/19 Evaluation by [REDACTED], M.D.; 6/30/2020 Initial Intake by [REDACTED], MA; 7/20/2020 [REDACTED] Master Treatment Plan; 9/8/2020 [REDACTED] County Schools IEP. (Exhibit D-2)

### **APPLICABLE POLICY**

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

In order for an applicant to be found eligible for the IDDW Program, they must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN); which may include background information, mental status examination, a measure of intelligence, adaptive behavior, achievement, and any other documentation deemed appropriate.

#### **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 ICF/IID 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. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

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 or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the IDDW Program 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 disabilities because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires services similar to those required for persons with intellectual disabilities.

Additionally, the applicant who has a diagnosis of intellectual disability or a severe related condition 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 out of the six identified major life areas listed under Section 513.6.2.2, Functionality.

**BMS Manual § 513.6.2.2 provides, in part:**

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);

- Learning (functional academics);
- Mobility;
- Self-direction; and
- Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community and leisure activities. At a minimum, three of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined 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 ID normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test.

The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

## **DISCUSSION**

Pursuant to policy, in order for an applicant to be found eligible for the IDDW Program, an individual must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN). To be medically eligible, criteria in each of the following categories must be met in order to be eligible for the IDDW Program: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care. Failure to meet any one of the eligibility categories results in a denial of program services.

On February 09, 2021, the Appellant's application for the IDDW Program was denied based on failure to meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, that manifested prior to age 22. The Appellant's denial further indicated that the documentation failed to demonstrate at least three (3) substantial adaptive deficits of the six (6) major life areas identified in policy. Policy defines a substantial deficit as standardized test scores of three (3) standard deviations below the mean, or less than one percentile, when compared to a normative population. To establish that the Respondent correctly denied the Appellant eligibility, the Respondent had to demonstrate by a preponderance of evidence that the Appellant lacked an eligible diagnosis for IDDW Program eligibility purposes.

Kerri Linton, consulting psychologist for the Respondent, testified that while Autism is, if severe, considered a related condition that may qualify an applicant for Waiver eligibility, the Appellant's diagnosis of Autism Spectrum Disorder, Level 1 did not meet the criteria for a severe related condition. In order to meet the severity level for IDDW Program medical eligibility, the Appellant had to have a diagnosis of Autism Spectrum Disorder, Level 3. Additionally, Ms. Linton testified that not only did the Appellant fail to meet the diagnostic criteria for eligibility, but he also failed to demonstrate at least 3 substantial adaptive deficits of the 6 major life areas. Additionally, he does not require the ICF/IID Level of Care necessary for IDDW Program eligibility.

Ms. Linton further testified that an Independent Psychological Evaluation (IPE) was completed on January 12, 2021, when the Appellant was 13 years of age, by a licensed Independent Psychologist (IP), [REDACTED], with [REDACTED]. A Weschler Intelligence Scale for Children, Fifth Edition (WISC-V) was administered, and it was found that the Appellant has a full-scale Intelligence Quotient (IQ) of 73, which falls in the borderline range and is not considered consistent with that of an Intellectual Disability. The Appellant was also administered an Adaptive Behavior Assessment System, Third Edition (ABAS-III) to evaluate the Appellant's adaptive functioning level. The Appellant must score a one (1) or a two (2) to reflect the degree of limitations required by policy to be considered a substantial deficit. The Respondent testified that none of the Appellant's ABAS-III scores fell in the one (1) or two (2) range, indicating that the Appellant does not have any substantial deficits required for IDDW Program eligibility.

Additionally, a Wide Range Achievement Test, Fifth Edition (WRAT-5) was administered to measure the Appellant's achievement levels in math, reading and spelling. The mean, or average, of this test is 100, with three (3) standard deviations below the mean, or a score of fifty-five (55) or below. The Appellant scored a low of 73 in math computation, which is reflective of his history of a math learning disability, and a high of 90 in spelling, indicative of no substantial delay with respect to learning. A Childhood Autism Rating Scale, High Functioning (CARS2-HF) evaluation was also completed. The Respondent testified that the Appellant was assessed with a Total Raw Score of 36 – falling within the high-functioning range, and a T-Score measured at 54 – which is most consistent with that of Asperger's Disorder traits on the Autism Spectrum. The CARS2-HF concludes the Appellant has Autism Spectrum Disorder, Level 1; Attention Deficit Hyperactivity Disorder (ADHD); Complicated Bereavement; Neglect of Child (victim); and Specific Learning Disorder (mathematics), therefore not meeting the requirement of diagnostic, substantial deficit, or ICF/IID Level of Care necessary for IDDW Program eligibility.

On May 23, 2019, a Psychological Evaluation was completed by [REDACTED], M.A. Ed.S., [REDACTED]. The Respondent testified that this report did not reflect specific IQ scores, but did note intellectual functioning in the Very Low range with Low Average Fluid Reasoning skills. The Appellant's Woodcock-Johnson Tests of Achievement – IV scores again reflected low scores in math, which also echoes the Appellant's learning disability in this particular area. The Initial Treatment Plan, Master Treatment Plan, and Behavior Management plan, all completed in October 2019 by [REDACTED], diagnose the Appellant with Unspecified Mood Disorder, ADHD - combined presentation, and Oppositional Defiant Disorder. A Psychological Summary completed on January 11, 2020 by [REDACTED] with [REDACTED], was also included. While it does not reflect a specific diagnosis, it does detail behavioral

issues with the Appellant being disruptive, resulting in local police being called, showing verbally aggressive behavior, and being rude and disrespectful.

A Highland [REDACTED] Hospital Admission Assessment and History and Physical, both completed on December 06, 2019, reference the Appellant presenting with, but not limited to, aggression, agitation/irritability, anger, anxiousness, conduct problems, depression, suicidal ideation, inattention, hallucinations, self-injury, aggression towards his mother resulting in police assistance, and hyperactivity. On December 07, 2019, an evaluation was completed by Highland [REDACTED] Hospital listing a Diagnostic Impression of: Major Depressive Disorder, recurrent and moderate; and Complicated Bereavement. It should further be noted that the Appellant's functionality was also assessed and is listed as: "Able to perform activities of daily living," which is indicative of the Appellant's lack of requirement for an ICF/IID Level of Care. Upon discharge, Highland [REDACTED] Hospital's Discharge Instruction Sheet completed on December 13, 2019 lists a discharge diagnosis of: Disruptive Mood Dysregulation Disorder, Major Depression, ADHD, and hospitalization due to suicidal ideation.

An April 21, 2020, a letter received from [REDACTED], M.D., reflects the Appellant was evaluated and treated for "issues with defiance, aggression, anger, anxiety, impulsivity, and depression during his time in [REDACTED] Intensive Outpatient Program." The letter lists the facility as having treated the Appellant with "Major Depressive Disorder, Oppositional Defiant Disorder, and ADHD." It should also be noted that at the time of the letter, Mr. [REDACTED] reflects the Appellant was previously admitted to an inpatient mental health facility several times due to extreme behaviors and further notes residential placement may be appropriate "in order to stabilize his mood and based on his history."

A Forensic Psychological Evaluation was completed on May 15, 2020, by [REDACTED], Ph.D. A Kaufman Brief Intelligence Test, Second Edition (KBIT-2), a Wide Range Achievement Test, Fourth Edition (WRAT-4), a Behavior Assessment System for Children, Second Edition (BASC-2), and a Structured Assessment of Violence Risk in Youth (SAVRY) were all administered. The Respondent noted that all tests yielded similar results with exception to the BASC-2. When reviewing the BASC-2, the Respondent found that the Appellant's mother was noted to have reported "autism as an ongoing problem," however, there were no other documents to accompany the purported diagnosis, nor did the administering Psychologist diagnose the Appellant with Autism. Instead, the Appellant received a provisional diagnosis of: Conduct Disorder, Disruptive Mood Dysregulation Disorder, and Complicated Bereavement.

An Initial Intake for residential facility placement with Braley and Thompson was completed on June 30, 2020 to determine if the Appellant would benefit from Level II Residential Placement services due to his "chronic symptoms of defiant behavior, anxiousness, lying, and anger outbursts." In addition to a review of the Appellant's previously mentioned tests and scoring, the June 2020 Intake provided scores derived from the Child and Adolescent Functional Assessment Scale (CAFAS). The report indicates CAFAS is used to assess the degree of impairment in children with emotional, behavioral or substance use symptoms/disorders. The Appellant received a Total for Youth Score of 160, which "indicated that he would likely need intensive treatment." It is noted that the information obtained during the Initial Intake and review of records which includes the Appellant's previous results of the KBIT-II, WRAT-V, BASC-III, CAFAS – indicate



the Appellant's diagnoses of Conduct Disorder and Disruptive Mood Dysregulation Disorder are warranted. An additional diagnosis of Provisional Tic Disorder was given due to the observation of both motor and vocal tics during his evaluation, though it is unclear if these are being caused by his current medication or a medical condition.

On September 08, 2020, [REDACTED] completed an "Amendment to the IEP without convening an IEP team meeting" form. Listed within the IEP were services geared toward the Appellant's behavioral problems. Of note, it lists the Appellant as qualifying for Special Education services as a student with a Specific Learning Disability due to scores derived from his previous assessments.

The Appellant's Representative admitted that while the current documentation does not support the Appellant's case for the IDDW Program, the IPE completed on January 12, 2021 was the only accurate assessment the Appellant has received to date. She further argued that while he seems to be below average, rather than low average, the Appellant does struggle with low social skills and community leisure activities, and that, without direction and consistent prompting, the Appellant does not register the need to move to the next task. The Appellant's Representative was further concerned that once the Appellant transitions back to a home setting, his inability to complete tasks and perform self-care without consistent prompting and direction from an adult will hinder his capacity for living at home and will necessitate the Appellant's need for an ICF/IID Level of Care.

To meet medical eligibility for the IDDW Program, the Appellant must have an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits that require an ICF/IID Level of Care. To be eligible for an ICF/IID Level of Care, the need must be verified by the IPE and corroborated by narrative descriptions of functioning and reported history. To demonstrate that the Appellant required an ICF/IID Level of Care, the evaluations of the Appellant had to reflect a need for intensive instruction, services, assistance, and supervision to learn new skills, maintain the current level of skills, and/or increase independence in activities of daily living; and a need for the same level of care and services that are provided in an ICF/IID setting.

As evidenced in the accompanying documentation, the Appellant's IPE listed Autism Spectrum Disorder, with a severity level of 1 - the least severe rating for Autism Spectrum Disorder. In order to meet the severity level for IDDW Program medical eligibility, the Appellant had to have a diagnosis of Autism Spectrum Disorder, Level 3. While policy lists Autism as a related condition that could qualify an applicant for IDDW services, the documentation does not support that the Appellant has an impairment of functioning or adaptive behavior similar to that of intellectually disabled persons and does not require ICF/IID Level of Care services similar to those for persons with intellectual disability. Therefore, the Respondent acted in accordance with policy in the denial of the Appellant's application for services.

### **CONCLUSIONS OF LAW**

- 1) Policy for the I/DD Waiver Program requires an applicant to meet medical eligibility criteria in each of the following categories: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care.
- 2) The testimony and documentation submitted did not establish that the Appellant's diagnosis of Autism is both severe and chronic.
- 3) To be eligible for an ICF/IID Level of Care, the Level of Care had to be demonstrated by the IPE and corroborated by narrative descriptions of functioning and reported history.
- 4) The Appellant did not require an ICF/IID Level of Care.

### **DECISION**

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

ENTERED this \_\_\_\_ day of June 2021.

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**Angela D. Signore**  
State Hearing Officer