



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

June 1, 2021



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 21-BOR-1472

Dear Mr. [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: Kimberly Stitzinger, Assistant Attorney General

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

██████████,

**Appellant,**

v.

**ACTION NO.: 21-BOR-1472**

**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 May 26, 2021 on an appeal filed with the Board of Review on April 8, 2021.

The matter before the Hearing Officer arises from the February 18, 2021 determination by the Respondent to deny the Appellant medical eligibility for the Medicaid Intellectual/Developmental Disabilities Waiver (I/DDW) Program.

At the hearing, the Respondent appeared by Kimberly Stitzinger, Assistant Attorney General. Appearing as a witness on behalf of the Respondent was Kerri Linton, Psychologist, Psychological Consultation and Assessment. Appearing on behalf of the Respondent but not providing testimony were Michael Hawk, DHHR; Gary Michael, Assistant Attorney General; and Jordan Mitchell, Psychological Consultation and Assessment. The Respondent's witness, Kerri Linton, was sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual §§ 513.6-513.6.4
- D-2 DHHR BMS Notice, dated February 18, 2021
- D-3 Independent Psychological Evaluation (IPE), dated February 9, 2021
- D-4 Appellant's Academic Achievement Present-Levels Update
- D-5 ██████████ Clinical Summary, Review Date of August 10, 2020
- D-6 Educational Evaluation, dated December 30, 2016
- D-7 Functional Behavioral Assessment, dated July 21, 2020

D-8 Psychological Evaluation, dated January 30 and February 6, 2017

**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 February 18, 2021, 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 the review of a February 9, 2021 IPE; August 10, 2020 Clinical Summary; December 30, 2016 Educational Evaluation; July 21, 2020 Functional Behavioral Assessment; and December 9, 2016 Psychological Evaluation (Exhibit D-2).
- 4) The Appellant does not have an Intellectual Disability diagnosis (Exhibits D-3 through D-8).
- 5) The Appellant has a diagnosis of Autism, Mild (Exhibits D-3, D-5, and D-8).

**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 contested the Respondent's denial.

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 either a diagnosis of Intellectual Disability or a related condition which is severe. The policy specifies that if severe and chronic, Autism is a related condition that 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. The evidence verified that the Appellant has a diagnosis of Autism, mild severity. No evidence was entered to verify that the Appellant has a diagnosis of Autism, Level III. Further, no evidence was entered to establish that the Appellant has a diagnosis of Intellectual Disability or another related condition which is severe. The Appellant's diagnosis did not meet the policy criteria for a severe related condition.

### **CONCLUSIONS OF LAW**

- 1) To meet medical eligibility for the Medicaid I/DDW Program, the Appellant must have a diagnosis of Intellectual Disability or a related condition which is severe.
- 2) To meet the criteria for a related condition which is severe, an Autism diagnosis must be Level III.
- 3) The preponderance of evidence failed to establish that the Appellant has a diagnosis of Intellectual Disability or another related condition which is severe.
- 4) The Respondent correctly denied the Appellant's 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 1<sup>st</sup> day of June 2021.

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