



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

May 25, 2021

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 21-BOR-1473

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 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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Bureau for Medical Services
Psychological Consultation and Assessment

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 21-BOR-1473

**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 May 19, 2021, on an appeal filed April 5, 2021.

The matter before the Hearing Officer arises from the March 27, 2021, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by her mother, █. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial dated March 27, 2021
- D-3 Independent Psychological Evaluation dated February 26, 2021
- D-4 Notice of Denial dated December 7, 2020
- D-5 Pre-K Family Report from █, 2020-2021
- D-6 Evaluation/Assessment Summary Report from █ dated April 30, 2021

Appellant's Exhibits:

- A-1 Birth to Three Individualized Family Service Plan dated December 30, 2019

- A-2 Birth to Three Evaluation/Assessment Summary Reports dated December 16, 2019, December 20, 2019, March 1, 2020, and March 4, 2020
- A-3 Sensory Profile Summary Report dated March 8, 2020
- A-4 [REDACTED] After-Visit Summary dated August 13, 2020
- A-5 Preschool Developmental/Behavioral Evaluation dated June 22, 2020, and Speech and Language Evaluation Report dated June 22, 2020
- A-6 Genetic Test Report dated December 21, 2020
- A-7 [REDACTED] ARH Occupational Therapy and Speech Therapy Records
- A-8 Independent Psychological Evaluation dated October 21, 2020
- A-9 Individualized Education Plan dated May 4, 2021
- A-10 Correspondence from [REDACTED], M.D., dated April 13, 2021
- A-11 Correspondence from [REDACTED], SLP dated May 2, 2021
- A-12 [REDACTED] County Schools Speech and Language Evaluation Report dated June 22, 2020
- A-13 Correspondence from [REDACTED], OTR/L dated May 2, 2021
- A-14 Correspondence from [REDACTED] dated May 4, 2021
- A-15 Correspondence from [REDACTED]
- A-16 Statement from [REDACTED]

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 applied for services under the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on February 26, 2021 in conjunction with the I/DD Waiver Program application (Exhibit D-3).
- 3) The Appellant met the diagnostic criteria for I/DD Waiver eligibility with a diagnosis of Autism Spectrum Disorder, Level 3 (Exhibit D-3).
- 4) The Respondent issued a Notice of Denial on March 27, 2021 advising that the Appellant's application had been denied as the documentation submitted failed to support the presence of at least three (3) substantial adaptive deficits in the six (6) major life areas (Exhibit D-2).
- 5) Subsequent to the March 27, 2021 denial, the Respondent identified deficits in the areas of Receptive or Expressive Language and the sub-domain category of Social under Capacity for Independent Living based upon additional documentation submitted for review (Exhibit D-6).
- 6) The March 27, 2021 denial remained unchanged as two additional deficits were required to meet the functionality criteria for I/DD Waiver services.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive I/DD Waiver 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.

Diagnosis

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, if severe and chronic in nature, may make an individual eligible for the I/DD Waiver 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 disability 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 disability.

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 in Section 513.6.2.2.

Functionality

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 intellectual disability (ID) normative populations when ID 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.

Active Treatment

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

DISCUSSION

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Appellant met the diagnostic criteria with an eligible diagnosis of Autism Spectrum Disorder, Level 3. The Respondent found that the Appellant was substantially delayed in the major life area of Receptive/Expressive Language and the subdomain category of Social under the major life area of Capacity for Independent Living. At least three (3) subdomain categories must be substantially delayed for a deficit to be awarded in Capacity for Independent Living.

Kerri Linton, the Respondent's witness, reviewed the test scores that were available for review that measured the Appellant's adaptive behaviors relating to the major life areas. The Adaptive Behavior Assessment Scale (ABAS) administered in February 2021 did not show eligible scores of less than one percentile in any of the six major life areas for the Appellant. The Developmental Profile that was administered in April 2021 documented eligible scores of less than one percentile

in Communication and Social, however, Ms. Linton stated no other deficits could be identified from the documentation that was available for review.

Policy measures a substantial adaptive deficit by a standardized test score of three standard deviations below the mean, or average, of less than one percentile when compared to scores derived from a normative population. Eligible test scores must be present before a substantial adaptive deficit can be identified and awarded to an applicant. The preponderance of the evidence failed to support the presence of additional substantial adaptive deficits for the Appellant as defined by policy.

Whereas the Appellant did not meet the functionality criteria as defined in policy, the Appellant does not meet the medical eligibility criteria for services under the I/DD Waiver Program.

CONCLUSIONS OF LAW

- 1) Policy requires that the diagnostic, functionality, need for active treatment criteria and the need for ICF/IID level of care must be met to establish medical eligibility for the I/DD Waiver Program.
- 2) The Appellant met the diagnostic criteria with an eligible diagnosis of Autism Spectrum Disorder.
- 3) To meet the functionality criteria, an individual must demonstrate the presence of at least three substantial adaptive deficits in the six major life areas.
- 4) The documentation submitted identified the presence of a deficit in Expressive/Receptive Language and a deficit in one subdomain category under Capacity for Independent Living.
- 5) The Appellant did not meet the functionality criteria of at least three substantial adaptive deficits in the major life areas.
- 6) The Appellant does meet the medical eligibility criteria for services under the I/DD Waiver Program.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's denial of the Appellant's application for services under the I/DD Waiver Program.

ENTERED this 25th day of May 2021.

Kristi Logan
Certified State Hearing Officer