



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

June 3, 2021

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 21-BOR-1598

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

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 21-BOR-1598

**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 June 2, 2021, on an appeal filed May 11, 2021.

The matter before the Hearing Officer arises from the April 19, 2021, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

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

Department's Exhibits:

- D-1 Bureau for Medical Services Policy Manual §513.6
- D-2 Notice of Denial dated April 19, 2021
- D-3 Independent Psychological Evaluation dated March 23, 2021
- D-4 Correspondence from █ dated February 10, 2021
- D-5 Assessment Report dated April 10, 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 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 March 23, 2021 in conjunction with the I/DD Waiver Program application (Exhibit D-3).
- 3) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2 (Exhibit D-3).
- 4) The Respondent issued a Notice of Denial on April 19, 2021, advising that the Appellant's application had been denied as the documentation did not indicate an eligible diagnosis of Intellectual Disability, or related condition, which is severe (Exhibit D-2).

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 Respondent denied the Appellant's application as he did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, in March 2021. Linda Workman, the Respondent's witness, testified that a rating of Level 2 indicates that the Appellant's Autism Spectrum Disorder is in the mild to moderate range. Ms. Workman noted that while Autism is a potentially eligible diagnosis for the I/DD Waiver Program, an individual must meet the severity criteria to meet the diagnostic criteria found in policy. Ms. Workman stated that a rating of Level 3 is required to meet the severity criteria.

A diagnosis of an Intellectual Disability for the Appellant has not been documented. In March 2021, the Appellant refused to participate in the Weschler Preschool and Primary Scale of Intelligence (WPPSI), which would determine the level of his cognitive functioning. In April 2017, the Appellant's full-scale Intelligence Quotient (IQ) was 70 as derived from the WPPSI. Ms. Workman testified that an IQ of 70 placed the Appellant in the borderline range of intellectual functioning, which does not warrant a diagnosis of an Intellectual Disability.

Whereas the Appellant does not have an eligible diagnosis of an Intellectual Disability, or related condition which is severe, he does not meet the diagnostic criteria for the I/DD Waiver Program. The Respondent's decision to deny the Appellant's application for services under the I/DD Waiver Program is affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the diagnostic criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2, which is considered to be in the mild to moderate range.
- 3) To meet the severity criteria for a related condition for medical eligibility, the Autism Spectrum Disorder rating must be a Level 3.
- 4) The Appellant did not meet the diagnostic criteria for services under the I/DD Waiver Program.

DECISION

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

ENTERED this 3rd day of June 2021.

Kristi Logan
Certified State Hearing Officer