



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

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Cabinet Secretary

BOARD OF REVIEW
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Jolynn Marra
Interim Inspector General

June 24, 2021

[REDACTED]

RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.:21-BOR-1606

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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Kerri Linton, Department Representative
Stacy Broce, Department Representative

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

█, A MINOR,

Appellant,

v.

Action Number: 21-BOR-1606

**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 minor. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WVDHHR) Common Chapters Manual. This fair hearing was convened on June 9, 2021, on an appeal filed May 12, 2021.

The matter before the Hearing Officer arises from the May 4, 2021 determination by the Respondent to deny the Appellant medical eligibility for services under the Intellectual and Developmental Disabilities (I/DD) Waiver Program.

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

** Observing for the Respondent was Charley Bowen, Psychological Consultation & Assessment (PC&A).

Department's Exhibits:

- D-1 Intellectual and Development Disabilities Waiver (IDDW) §§ 513.6 through 513.6.4
- D-2 Notice of Denial, dated May 4, 2021
- D-3 Independent Psychological Evaluation (IPE), dated April 8, 2021
- D-4 █ County Schools Individualized Education Program (IEP), dated March 15, 2021; Eligibility Determination Checklist, dated March 15, 2021; Notice of Eligibility Committee and/or Individualized Education Program Team Meeting, dated February 9, 2021; and Eligibility Committee Report, dated March 15, 2021
- D-5 West Virginia Birth to Three Evaluation/Assessment Summary Report, dated February 9, 2021

D-6 Genetic Test Report, dated September 10, 2020

Appellant's Exhibits:

- A-1 Written Correspondence from [REDACTED], DPT, with [REDACTED]
- A-2 Printout of CACNA-1A Foundation
- A-3 Written Correspondence from [REDACTED], M.D., with Cincinnati Children's Division of Human Genetics

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) An application was made on behalf of the Appellant for services under the I/DD Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services (BMS), contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determinations.
- 3) On April 8, 2021, [REDACTED], (Ms. [REDACTED]), a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-3)
- 4) On April 8, 2021, the Appellant was administered the DAYC-2 and had a cognitive standard score of 73.
- 5) The Appellant is diagnosed with Global Developmental Delay and CACNA-1A Disorder, by history. (Exhibits A-1, A-3, D-3, D-5, and D-6)
- 6) On May 4, 2021, the Respondent issued a notice denying the Appellant's application for the I/DD Waiver Program because documentation submitted for review did not support an eligible diagnosis of Intellectual Disability or a related condition which is severe. The notice also stated Global Developmental Delay is not considered to be an eligible diagnosis and the genetic condition, which is noted can be related to Intellectual Disability, but Intellectual Disability has not been diagnosed and cannot be assumed to be present. (Exhibit D-2)

APPLICABLE POLICY

BMS 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 Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IDD) Level of Care.

BMS Provider Manual § 513.6.2.1 Diagnosis provides in part:

The application 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 I/DD Waiver Program include, but 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 (ID) 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 (3) substantial deficits out of the six (6) identified major life areas listed in § 513.6.2.2.

BMS Provider Manual § 513.6.2.2 Functionality provides in part:

The applicant must have substantial deficits in at least three (3) of the six (6) 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 (6) sub-domains: home living, social skills, employment, health and safety, community, and leisure activities. At a minimum, three (3) 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 (3) 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 ID has been diagnosed and the scores are derived from the 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 Individualized Education Program (IEP), Occupational Therapy evaluation, etc. if requested by the IP for review.

DISCUSSION

To be eligible for I/DD Waiver Program services, an applicant must be considered medically eligible in the following four categories: diagnosis, functionality, the need for active treatment, and the requirement for an ICF/IDD Level of Care. Medical eligibility is considered by looking at each of these categories in order, beginning with diagnosis. If any of these eligibility categories are not met, medical eligibility for the I/DD Waiver Program is denied.

On May 4, 2021, the Appellant's I/DD Waiver application was denied, as the Respondent found that documentation did not provide an eligible diagnosis of Intellectual Disability or a related condition, which is severe. The Appellant's notice of denial also stated Global Developmental Delay is not considered to be an eligible diagnosis and the genetic condition, which is noted can be related to Intellectual Disability, but Intellectual Disability has not been diagnosed and cannot be assumed to be present.

To meet the diagnostic criteria for I/DD Waiver eligibility, an applicant must have a diagnosis of Intellectual Disability or a related condition, which is severe and chronic, and which manifested prior to age 22. The Respondent had to prove by a preponderance of evidence that the Appellant lacked an eligible diagnosis for I/DD Waiver eligibility purposes.

On April 8, 2021, an IPE was completed by Ms. [REDACTED], an independent psychologist, to determine I/DD Waiver Program eligibility. The Appellant has previous diagnoses of CACNA-1A, which causes episodic ataxia, excessive drooling, and possible seizure activity. Ms. [REDACTED] issued current diagnoses for the Appellant of Global Developmental Delay and CACNA-1A

Disorder, by history. It is noted that the IPE states the diagnosis of a Global Developmental Delay was given because the Appellant failed to meet several of his developmental milestones and he currently displays delays in several areas of adaptive functioning, but his intellectual functioning could not be reliably assessed at that time.

The Respondent indicated the Appellant has a genetic condition, CACNA-1A, that can be associated with an Intellectual Disability, but is not a stand-alone related condition for I/DD Waiver purposes. The Respondent offered that a similar situation occurs with individuals that have a diagnosis of Down Syndrome, which is a chromosomal abnormality as well. Down Syndrome, similar to CACNA-1A, is not a stand-alone related condition for I/DD Waiver purposes either. The Respondent explained that genetic or chromosomal abnormalities must have cognitive impairment or cognitive components of Intellectual Disability in order to meet the I/DD Waiver eligibility criteria.

The Respondent indicated the Appellant was three (3) years old at the time of his psychological evaluation and was unable to participate in an intellectual assessment battery. The Respondent explained that often when a child is unable to participate in the full-battery Intellectual Quotient (IQ) test, the psychologist will administer a Developmental Assessment of Young Children, Second Edition (DAYC-2) to give an indication of a child's cognitive functioning. On April 8, 2021, the Appellant was administered the DAYC-2 and had a cognitive standard score of 73, which, according to the Respondent is lower than other neurotypical peers, but a standard score of 73 does not fall to the level of a potential Intellectual Disability, which would be standard scores of 55 and below.

The Respondent testified the Appellant's March 15, 2021 Individualized Education Program (IEP) with ██████████ County Schools notes that a Developmental Profile 3 (DP3) and Early Learning Accomplishment Profile (E-LAP), which assesses language in children, were administered in the past and Developmental Delays were listed. The Respondent further testified the Appellant's March 15, 2021 Eligibility Determination Checklist and Eligibility Committee Report for ██████████ County Schools show that the Appellant was serviced in the school system for Developmental Delay and indicates his area of exceptionality that qualified him for an IEP was for Developmental Delay.

The Respondent indicated that Developmental Delay and CACNA-1A are not being contested, however there was not enough evidence to show that these diagnoses meet the threshold for the significance of an Intellectual Disability. The Respondent indicated the Appellant's genetic disorder is not a severe related condition as there was no concurrent Intellectual Disability diagnosis.

The Appellant's mother contended that because the Appellant has a diagnosis of CACNA-1A, he has an Intellectual Disability, however; there was no assessment available to support this claim. The Appellant's mother testified with a CACNA-1A diagnosis, her son has a lot of problems, a wide range of symptoms, and needs constant supervision. The Appellant's mother further testified the Appellant is unable to interact with other children, dress himself, or follow simple commands. The Appellant's mother also stated that the Appellant has behavioral problems and gets frustrated easily. The Appellant's mother testified the Appellant can only take two or three steps, is

frequently dizzy, and is at high risk of falling. The Appellant's mother explained the Appellant is constantly hurting himself and that she typically must carry him or push him in a stroller everywhere. The Appellant's mother stated the Appellant is learning to walk with a walker. The Appellant's mother explained the Appellant will have life-long therapy and neurologist appointments, along with yearly Magnetic Resonance Images (MRI). The Appellant's mother further explained that the Appellant is considered to be progressing in his diagnosis, but at any point he could regress.

The Appellant's mother's testimony was moving and showed that her son's condition is a life-long condition and he is delayed. Based on the Respondent's testimony and the documentation submitted, the Respondent proved by a preponderance of evidence that the Appellant's diagnosis of Global Developmental Delay and CACNA-1A, by history, was not an eligible diagnosis for the I/DD Waiver Program.

CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires the applicant to have been diagnosed with an Intellectual Disability or related condition, which is severe and results in impairment of intellectual functioning to meet diagnostic eligibility criteria.
- 2) Evidence submitted did not establish that the Appellant has an eligible diagnosis.
- 3) Because the Appellant does not have an eligible diagnosis, the Appellant does not meet medical eligibility criteria for the I/DD Waiver Program.

DECISION

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

ENTERED this _____ day of June 2021.

Danielle C. Jarrett
State Hearing Officer