



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

Bill J. Crouch
Cabinet Secretary

Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 30018
Tara.B.Thompson@wv.gov

Jolynn Marra
Interim Inspector
General

July 9, 2021



RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.: 21-BOR-1637

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,

Tara B. Thompson, MLS
State Hearing Officer
State Board of Review

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

cc: Stacy Broce, Bureau for Medical Services
Kerri Linton, Psychological Consultation and Assessment
Janice Brown, KEPRO

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

█, A MINOR,

Appellant,

v.

ACTION NO.: 21-BOR-1637

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on June 23, 2021 on an appeal filed with the Board of Review on May 25, 2021.

The matter before the Hearing Officer arises from the Respondent's February 3, 2021 decision to deny the Appellant medical eligibility for the Medicaid Intellectual and Developmental Disabilities Waiver (I/DDW) program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation and Assessment. The Appellant appeared *pro se* by her mother, █. Appearing as a witness on behalf of the Appellant was █, █. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Bureau for Medical Services (BMS) Manual §§ 513.6 through 513.6.4
- D-2 BMS Notice of Denial, dated February 3, 2021
- D-3 Independent Psychological Evaluation (IPE), dated December 14, 2020
- D-4 Confidential Psychological Evaluation, dated December 4, 2018
- D-5 █ County Schools Confidential Educational Evaluation Report, dated April 11, 2019
- D-6 █ County Schools Confidential Psychological/ Multidisciplinary Evaluation Report, dated April 15, 2019
- D-7 █ County Schools Eligibility Committee Report, dated April 25, 2019

D-8 [REDACTED] County Schools Individualized Education Program (IEP), dated May 18, 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 I/DDW Program.
- 2) On February 3, 2021, the Respondent issued a notice advising the Appellant that her application for I/DDW eligibility was denied due to lacking an eligible diagnosis of intellectual disability or a related condition which is severe. The notice indicated, "while the diagnosis of mild intellectual disability is rendered in the IPE, this diagnosis is incompatible with previous evaluations and with other psychometric data" (Exhibit D-2).
- 3) The February 3, 2021 notice reflected that the Appellant was further ineligible because the documentation submitted did not support the presence of substantial adaptive deficits in three or more of the six major life areas (Exhibit D-2).
- 4) The Appellant has a substantial adaptive deficit in the area of *capacity for independent living* (Exhibit D-2).
- 5) The Respondent's February 3, 2021 denial was based on review of "12/14/2020 IPE, 12/4/18 Confidential Psychological Evaluation, 4/11/19 Confidential Educational Evaluation Report, 4/15/19 Confidential Psychological/Multidisciplinary Evaluation report, 4/15/19 Eligibility Committee Report, 5/18/2020 IEP" (Exhibit D-2).
- 6) The Appellant is a minor, under age 22 (Exhibits D-3 through D-8).
- 7) On December 4, 2018, psychologist [REDACTED] completed a Confidential Psychological Evaluation (Exhibit D-4).
- 8) On December 4, 2018, the Appellant presented as motivated, cooperative, oriented, polite, with euthymic mood, broad affect, serious attitude, required no encouragement, and concentrated within normal limits (Exhibit D-4).
- 9) On December 4, 2018, the Appellant scored a Full Scale Intelligence Quotient (IQ) of 74—in the borderline range of general intellectual functioning—on the Wechsler Abbreviated Scale of Intelligence (WASI).

- 10) As of December 4, 2018, the Appellant was diagnosed with Borderline Intellectual Functioning and Autism Spectrum Disorder (by history) (Exhibit D-4).
- 11) On April 15, 2019, psychologist [REDACTED] completed a Confidential Psychological/Multidisciplinary Evaluation Report (Exhibit D-6).
- 12) On April 15, 2019, the Appellant willingly entered the testing session, appeared to listen carefully to the instructions, began tasks promptly, and worked until the tasks were completed (Exhibit D-6).
- 13) On April 15, 2019, the Appellant scored a Full Scale IQ of 82 on the Stanford-Binet Intelligence Scales, Fifth Edition (SB5) (Exhibit D-6).
- 14) As of April 15, 2019, the Appellant was diagnosed with Autism Spectrum Disorder (Exhibit D-6).
- 15) The Appellant receives academic instruction 30% in a General Education Environment and 70% in a Special Education Environment, with Autism as her primary area of exceptionality (Exhibits D-7 and D-8).
- 16) On December 14, 2020, psychologist [REDACTED] completed an IPE (Exhibit D-3).
- 17) On December 14, 2020, the Appellant presented with quick mood changes, impaired attention span, required frequent redirection, and had varied affect throughout the assessment (Exhibit D-3).
- 18) On December 14, 2020, the Appellant scored a Full Scale IQ of 68 on the Wechsler Adult Intelligence Scale-Fourth Edition (Exhibit D-3).
- 19) The IPE diagnostic impressions reflected diagnoses of Intellectual Disability, Mild, and Autism Spectrum Disorder, Level 2 (Exhibit D-3).
- 20) Motivation, attention, interests, and opportunities for learning could influence intelligence testing results (Exhibit D-4).
- 21) An individual cannot test beyond their intellectual ability but can test lower than their ability.

APPLICABLE POLICY

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

To be eligible for the I/DDW program, the applicant must meet medical eligibility. 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 § 513.6.1.1 provides in part:

The IPE includes assessments that support the diagnostic considerations offered and relevant measures of adaptive behavior. The IPE is utilized by the MECA to make a medical eligibility determination. The MECA makes a final medical eligibility determination within 30 days of receipt of the completed IPE that utilizes the current approved diagnostic system.

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

The MECA determines the qualification for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) level of care based on the IPE that verifies that the applicant has an 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. For the I/DDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also by narrative descriptions contained in the documentation.

To be eligible to receive I/DDW 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.

BMS § 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 that constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

If severe and chronic, Autism may be an eligible related condition.

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 § 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 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 standard 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.

DISCUSSION

The Appellant contested the Respondent's decision to deny the Appellant medical eligibility for the I/DDW Program. The Appellant argued that the Appellant's abilities at school and home should be prioritized over the test scores when considering medical eligibility. The Respondent contended that the Appellant did not have an eligible diagnosis or have three functioning deficits as required by policy.

Diagnosis

To prove that the Respondent correctly denied the Appellant medical eligibility for the I/DDW Program, the Respondent had to demonstrate by a preponderance of evidence that the Appellant lacked an eligible diagnosis of intellectual disability or a related condition that is severe. The Respondent testified that to meet the severity level for I/DDW medical eligibility, the Appellant's

diagnosis of Autism had to be Level 3. The preponderance of evidence verified that the Appellant did not have a diagnosis of Autism, Level 3.

During the hearing, the Respondent testified the Appellant did not meet the diagnostic criteria for Medicaid I/DDW Program eligibility because the intellectual disability diagnosis identified on the December 14, 2020 IPE was inconsistent with other diagnostic materials submitted for eligibility review. The Respondent contended that the additional submitted documentation refuted the IPE diagnosis of intellectual disability and that the evidence demonstrating the Appellant's higher intellectual functioning "could not be ignored." The Respondent argued that an individual cannot test beyond their intellectual ability but could test lower than their ability based on how they felt that day or other factors. The psychologist's notation on the December 4, 2018 evaluation indicated that motivation, attention, interests, and opportunities for learning could influence intelligence testing results.

The evidence reflected the Appellant's presentation during the December 4, 2018 and April 15, 2019 assessments was significantly different than the Appellant's presentation during the December 14, 2020 IPE. The IPE reflected that the Appellant presented with quick mood changes, impaired attention span, required frequent redirection, and had varied affect throughout the assessment. Subsequently, her Full Scale IQ of 68 measured below her Full Scale IQ scores of 74 and 82 measured on December 4, 2019 and April 15, 2019, respectively. As the December 14, 2020 IPE Full Scale IQ score is not consistent with previous Full Scale IQ scores, the IPE diagnostic impressions are unreliable.

ICF Level of Care Functioning

The policy specifies that the Appellant be diagnosed with an intellectual disability or a severe related condition with concurrent substantial deficits in at least three out of the six identified major life areas. Substantial functioning deficits must be verified by standardized adaptive behavior test scores. During the hearing, the Respondent stipulated that the Appellant has a substantial deficit in the functioning area of *capacity for independent living*. The preponderance of evidence verified that the Appellant lacked substantial deficits in additional functioning areas.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid I/DDW Program, the Appellant must have an intellectual disability or a severe related condition.
- 2) As the December 14, 2020 IPE Full Scale IQ score is not consistent with previous Full Scale IQ scores, the IPE diagnostic impressions are unreliable.
- 3) The preponderance of evidence established that the Appellant lacks an eligible diagnosis for the Medicaid I/DDW Program.

- 4) To be eligible for the Medicaid I/DDW Program, the Appellant must have an eligible diagnosis and concurrent substantial deficits in at least three of the six identified major life areas that require an ICF level of care.
- 5) The preponderance of evidence verified that the Appellant has substantial deficits in one of the six identified major life areas that require an ICF level of care.
- 6) 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 decision to deny the Appellant's medical eligibility for the Medicaid I/DDW Program.

ENTERED this 9th day of July 2021.

Tara B. Thompson, MLS
State Hearing Officer