



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-2278 Fax: (304) 558-1992

Jolynn Marra
Interim Inspector General

August 4, 2021

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 21-BOR-1662

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,

Angela D. Signore
State Hearing Officer
State Board of Review

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

cc: Stacy Broce, BMS
Kerri Linton, Psychological Consultation & Assessment
Sarah Clendenin, Psychological Consultation & Assessment

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 21-BOR-1662

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on July 8, 2021, on an appeal filed June 1, 2021.

The matter before the Hearing Officer arises from the May 13, 2021 determination by the Respondent to deny the Appellant's medical eligibility for services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

At the hearing, the Respondent appeared by Kerri Linton, Consulting Psychologist for the Bureau for Medical Services (BMS). The Appellant was represented by █, Program Coordinator, █. Appearing as a witness for the Appellant was █, WV DHHR Guardian. 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 Bureau for Medical Services (BMS) Manual § 513.6- 513.6.4
- D-2 DHHR BMS Notice, dated May 13, 2021
- D-3 Independent Psychological Evaluation, dated April 08, 2021
- D-4 Independent Psychological Evaluation, dated May 28, 2015
- D-5 DHHR BMS Notice, dated June 05, 2015
- D-6 Independent Psychological Evaluation, dated April 11, 2019
- D-7 DHHR BMS Notice, dated May 29, 2019

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 Medicaid Intellectual and Developmental Disabilities Waiver (IDDW) Program on three (3) different occasions. (Exhibits D-2, D-5, and D-7)
- 2) The Respondent, through the Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDDW Program, including eligibility determination. (Exhibit D-2)
- 3) On April 3 and May 28, 2015, [REDACTED], a Licensed Psychologist, attempted to complete an Independent Psychological Evaluation (IPE) on the Appellant, who was 41 years of age at the time of assessment. (Exhibit D-4)
- 4) The April 3 and May 28, 2015 IPE lists that due to the Appellant's lack of participation during the assessments, a diagnoses of Intellectual Disability could not be established. (Exhibit D-4)
- 5) On June 05, 2015, in response to the Appellant's application for IDDW services, the Respondent issued a notice advising that the Appellant's application had been denied as the documentation did not support the presence of an eligible diagnosis. The notice further advised that individuals whose primary diagnosis is mental illness are specifically excluded from participation in the IDDW program. (Exhibit D-5)
- 6) The Respondent's June 05, 2015 denial was based on "April 3 and May 28, 2015 IPE." (Exhibit D-2)
- 7) On April 11, 2019, [REDACTED], a Licensed Psychologist, completed an Independent Psychological Evaluation on the Appellant, who was 46 years of age at the time of assessment. (Exhibit D-6)
- 8) The April 11, 2019 IPE diagnosed the Appellant with Schizophrenia and Intellectual Disability Disorder, Mild. (Exhibit D-6)
- 9) On May 29, 2019, in response to the Appellant's application for IDDW services, the Respondent issued a notice advising that the Appellant's application had been denied as

the documentation did not support the presence of an eligible diagnosis of intellectual disability or related condition with associated substantial adaptive delays present within the development period. The notice further advised that serious mental illness as a primary diagnosis is specifically excluded from eligibility for the IDDW program. (Exhibit D-7)

- 10) The Respondent's May 29, 2019 denial was based on "April 11, 2019 IPE, June 05, 2015 Notice of Denial, March 18, 2019 Environmental Crisis Plan, Undated Consumer Profile." (Exhibit D-7)
- 11) On April 08, 2021, [REDACTED], a Licensed Psychologist, completed an Independent Psychological Evaluation on the Appellant, who was 48 years of age at the time of assessment. (Exhibit D-3)
- 12) The April 08, 2021 IPE diagnosed the Appellant with Schizophrenia and Intellectual Developmental Delay, Mild. (Exhibit D-3)
- 13) On May 13, 2021, in response to the Appellant's application for IDDW services, the Respondent issued a notice advising that the Appellant's application had been denied as the documentation provided for review does not include records from the development period (prior to the age of 22) to substantiate the potentially eligible diagnosis of Mild Intellectual Disability and establish its presence prior to the onset of the major mental illness. The notice further advised that mental illness as a primary diagnosis is specifically excluded from eligibility for the IDDW program. (Exhibit D-2)
- 14) The Respondent's May 13, 2021 denial was based on "April 08, 2021 IPE, April 03 and May 28, 2015 IPE by [REDACTED], June 05, 2015 Notice of Denial, April 11, 2019 IPE by [REDACTED], May 29, 2019 Notice of Denial, and October 2020 Medication List." (Exhibit D-2)

APPLICABLE POLICY

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

In order for an applicant to be found eligible for the IDDW Program, they must meet medical eligibility criteria. 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 § 513.6.2 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. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

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 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 may, if severe and chronic in nature, make an individual eligible for the IDDW 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 disabilities 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 disabilities.

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 Manual § 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 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 ID normative populations when intellectual disability 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.

DISCUSSION

Pursuant to policy, in order for an applicant to be found eligible for the IDDW Program, an individual must meet medical eligibility criteria. 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). To be medically eligible, criteria in each of the following categories must be met in order to be eligible for the IDDW Program: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care. To meet the diagnostic criteria for IDDW 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.

On May 13, 2021, the Appellant's application for the IDDW Program was denied based on failure to provide records from the developmental period (prior to age 22) to substantiate the potentially eligible diagnosis of Mild Intellectual Disability and establish its presence prior to the onset of major mental illness. The Appellant's denial notice further indicated that Mental Illness is specifically excluded as an eligible diagnosis per policy. To establish that the Respondent correctly denied the Appellant eligibility, the Respondent had to demonstrate by a preponderance of evidence that the Appellant lacked an eligible diagnosis that manifested prior to age 22 for IDDW Program eligibility purposes.

Keri Linton, consulting psychologist for the Respondent, testified that the Appellant's application for Waiver services was denied as there was no documentation of a diagnosis of an Intellectual Disability prior to age 22. Ms. Linton testified that although the Appellant received a diagnosis of a Mild Intellectual Disability at age 48, the Appellant also has a history of mental illness, and the possibility of the Appellant experiencing a decline in intellectual functioning due to the mental illness and/or the psychotropic medications she is prescribed cannot be excluded. Ms. Linton further testified that an Independent Psychological Evaluation (IPE) was completed on April 08, 2021, by a licensed Independent Psychologist (IP), [REDACTED], with [REDACTED]. At that time, the Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV) was administered. The results of the WAIS-IV were limited in validity due to the Appellant's refusal to cooperate. The scores revealed that the Appellant has a full-scale Intelligence Quotient (IQ) of 48, which is consistent with that of Mild Intellectual Disability; however, no documentation was provided to corroborate the Appellant's diagnosis was present prior to the age of 22. Additionally, the Appellant was diagnosed with Schizophrenia, by history. Ms. Linton testified that because the Appellant currently has active psychotic symptoms, it cannot be ascertained if the Appellant's Mild Intellectual Disability is caused by her current mental illness and/or psychotropic medication, or if the Appellant's Intellectual Disability predated this.

Ms. Linton testified that a previous IPE was completed by [REDACTED] with [REDACTED] on April 11, 2019, when the Appellant was 46 years of age. At that time, a WAIS-IV was administered resulting in a full-scale IQ of 58. The Appellant was diagnosed with Schizophrenia, by history, and Mild Intellectual Disability. On May 29, 2019, in response to an application for IDDW services, the Respondent issued a notice advising that the Appellant's application had been denied as the documentation did not support the presence of an eligible diagnosis of Intellectual Disability or related condition with associated substantial adaptive delays present within the development period (prior to age 22). The notice further advised that serious mental illness as a primary diagnosis is specifically excluded from eligibility for the IDDW program.

An additional IPE was completed by [REDACTED] on April 03 and May 28, 2015. It is noted that the Stanford Binet Intelligence Scale – Fifth Edition was attempted twice, but the Appellant was not cooperative. The records report that she has a long history of mental illness that includes multiple hospitalizations and outpatient treatments. The records also note that the Appellant may have had a traumatic brain injury as a child; however, that could not be substantiated due to the absence of documentation during the Appellant's early childhood and developmental age. The 2015 IPE concludes that because the Appellant is very paranoid and suspicious, her inability to participate was significantly impaired by her mental illness, and therefore, a diagnosis of an

Intellectual Disability could not be established. On June 05, 2015, in response to an application for IDDW services, the Respondent issued a notice advising that the Appellant's application had been denied due to documentation not supporting the presence of an eligible diagnosis for the IDDW program. The notice further advised that individuals whose primary diagnosis is mental illness are specifically excluded from participation in the IDDW program.

Ms. Linton concluded that while the Appellant's previous applications deferred diagnosing Intellectual Disability, she has now been diagnosed with an Intellectual Disability in addition to mental illness and Schizophrenia, beginning at 46 years of age. However, because there is a lack of documentation to corroborate the Appellant's diagnosis was present prior to the age of 22, the Appellant's application for IDDW program services was denied. The Appellant's Representative, Mr. [REDACTED], testified that after hearing Ms. Linton's testimony, the reason for denial was understood. The Appellant's Witness, Mr. [REDACTED], testified that because the Appellant was born in [REDACTED], obtaining the Appellant's early childhood and developmental age medical history has been challenging and unsuccessful.

Although both the Appellant's Representative and witness provided a plausible claim, the policy is clear in that psychometric data or other documentation must be provided to corroborate a diagnosis of an Intellectual Disability or related condition, which is severe, and which manifested prior to age 22. Although the Appellant has a diagnosis of an Intellectual Disability at age 46, there is insufficient documentation to support that the intellectual impairment was present prior to age 22 and that it cannot be attributed to her major mental illness. Therefore, the Respondent acted in accordance with policy in the denial of the Appellant's application for services.

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) To meet the diagnostic criteria, the applicant must have been diagnosed with an Intellectual Disability during the developmental period, prior to age 22.
- 3) The documentation submitted failed to establish that the Appellant had a diagnosis of an Intellectual Disability prior to age 22.
- 4) The Appellant does not meet the medical eligibility criteria for I/DD Waiver services.

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 ____ day of August 2021.

Angela D. Signore
State Hearing Officer