



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
4190 Washington Street, West  
Charleston, West Virginia 25313  
304-746-2360  
Fax – 304-558-0851

Jolynn Marra  
Interim Inspector General

August 12, 2021



RE: ██████████, A MINOR v. WVDHHR  
ACTION NO.:21-BOR-1694

Dear Mr. ██████████:

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: Linda Workman, Department Representative  
Stacy Broce, Department Representative  
Janice Brown, Department Representative

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

█, A MINOR,

**Appellant,**

v.

**Action Number: 21-BOR-1694**

**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 July 7, 2021, on an appeal filed June 1, 2021.

The matter before the Hearing Officer arises from the May 3, 2021 determination by the Respondent to deny the Appellant medical eligibility for services under the Intellectual and Development Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Linda Workman, consulting psychologist for the Bureau for Medical Services (BMS). The Appellant appeared by his father, █. 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 (I/DD Waiver Program) §§ 513.6 through 513.6.4
- D-2 Notice of Denial, dated May 3, 2021
- D-3 Independent Psychological Evaluation (IPE), dated March 24, 2021
- D-4 Notice of Denial, dated January 22, 2013

**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) 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 determination.
- 3) Linda Workman (Ms. Workman), a licensed psychologist with PC&A, made the eligibility determination regarding the Appellant.
- 4) The Appellant meets diagnostic criteria for the I/DD Waiver Program with an eligible diagnosis of Autism Spectrum Disorder, With Accompanying Impairments in Intellect and Language, Requiring Very Substantial Support, Level 3. (Exhibit D-3)
- 5) On March 24, 2021, Tracy Smith (Ms. Smith), a Licensed Psychologist, completed a psychological evaluation on the Appellant. (Exhibit D-3)
- 6) Ms. Smith administered the Developmental Profile 3 (DP3) instrument which indicated the Appellant was delayed in all areas of intellectual and cognitive functioning. (Exhibit D-3)
- 7) Ms. Smith administered the Adaptive Behavior Assessment System (ABAS-3) instrument. (Exhibit D-3)
- 8) PC&A relies on ABAS-3 scores, along with narrative descriptions in the IPE, to determine the level of adaptive functioning. Scaled scores of one (1) and two (2) are considered eligible scores on the ABAS-3 for the I/DD Waiver Program. (Exhibit D-3)
- 9) The Appellant scored a one (1) in the major life areas of *Self-Care* and *Receptive or Expressive Language*. (Exhibit D-2)
- 10) The Appellant scored a one (1) in *Social*, a subdomain of the major life area of *Capacity for Independent Living*. (Exhibit D-3)
- 11) Scores in the major life areas of *Learning*, *Self-Direction*, and the remaining subdomains of *Capacity for Independent Living* (*Home Living*, *Health & Safety*, *Community*, and *Leisure Activities*) ranged from 3 to 6. (Exhibit D-3)
- 12) The narratives in the Independent Psychological Evaluation (IPE) were consistent with the ABAS-3 results. (Exhibit D-3)

13) On May 3, 2021, the Respondent issued a notice of denial, advising that the Appellant's application was denied as documentation provided for review does not support the presence of substantial deficits in three (3) or more of the six (6) major life areas for eligibility.

### **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 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 75<sup>th</sup> percentile when derived from Intellectual Disability (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 scores 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**

In order to be eligible to receive 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 of an ICF/IID 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. To meet the diagnostic criteria for I/DD Waiver eligibility, an applicant must have a diagnosis of an Intellectual Disability or a related condition, which is severe and chronic, and which manifested prior to age 22. Standardized scores are used to identify substantial adaptive deficits in the major life areas to meet the functional criteria.

The Appellant met the diagnostic criteria with an eligible diagnosis of Autism Spectrum Disorder, With Accompanying Impairments in Intellect and Language, Requiring Very Substantial Support,

Level 3. Once an eligible diagnosis was established, the Appellant was evaluated to see if he met the functional criteria for the I/DD Waiver Program.

On May 3, 2021, PC&A issued a notice denying the Appellant's application for I/DD Waiver Program services on the basis that the Appellant failed to demonstrate substantial adaptive deficits in three (3) or more of the six (6) major life areas identified for I/DD Waiver Program services eligibility. The Appellant was awarded substantial adaptive deficits in the areas of *Self-Care*, *Receptive or Expressive Language*, and in one (1) of the required four (4) subdomains of *Capacity for Independent Living (Social)*.

On May 3, 2021, the Appellant was administered an ABAS-3 standardized assessment that evaluates different aspects of adaptive functioning. The Appellant must score a one (1) or a two (2) to reflect the degree of limitations required by policy's definition of substantial deficits. Once adaptive behaviors are measured, they are compared to same-aged peers. The Appellant's ABAS-3 was rated by the Appellant's father and scored by a licensed psychologist. The Appellant's ABAS-3 scores indicated two (2) substantial deficits. The narrative descriptions were consistent with the ABAS-3 results regarding the Appellant's deficits in *Self-Care* and *Receptive or Expressive Language*.

The narrative for the major area of *Mobility* demonstrated the Appellant currently ambulates without aid. The Respondent testified the Appellant must utilize a wheelchair in order to have a substantial delay for a deficit. The narrative for the major life area of *Learning* demonstrates the Appellant currently attends ABLC Center for speech and occupational therapy. The narrative for the major life area of *Self-Direction* demonstrated the Appellant is able to choose a snack for himself, but that he does not initiate anything on his own and needs constant prompting and supervision. The Respondent indicated the Appellant must not be able to make his own choices.

The Appellant scored in the "Extremely Low" range for *Social*. The Respondent testified that *Social* is a sub-domain of the major life area of *Capacity of Independent Living*. Policy states in order to receive a substantial deficit for *Capacity for Independent Living*, a minimum of three (3) sub-domains must be substantially limited. While the Appellant scored extremely low to below average in other adaptive skills none of his scores met policy's definition of a substantial deficit, meaning scores of three (3) standard deviations below the mean, or less than one percentile.

The Appellant's father argued the Appellant should have been awarded an additional deficit in the area of *Learning*, *Self-Direction*, and *Capacity for Independent Living*. The Appellant's father testified the Appellant is non-verbal. The Appellant's father testified the Appellant has to be constantly prompted, supervised, and is unable to make decisions for himself. The Appellant's father indicated the Appellant is unable to communicate and that he does not have awareness for the safety of himself or others. The Appellant's father believes the Appellant could benefit from the I/DD Waiver Program. Testimony given by the Appellant's father did not establish that the Appellant should have been awarded additional deficits in the areas of *Learning*, *Self-Direction*, and *Capacity for Independent Living*.

Based on evidence, the Appellant does not meet the functionality criteria for eligibility for the I/DD Waiver Program. The Respondent indicated that the Appellant's father should reapply for

services if the Appellant demonstrates additional substantial delays or if the Appellant's father has additional documentation to submit for review.

### **CONCLUSIONS OF LAW**

- 1) The Appellant meets the diagnostic component of an eligible diagnosis of Autism Spectrum Disorder, Level 3.
- 2) Pursuant to policy, the Appellant must demonstrate substantial adaptive deficits in at least three (3) of the six (6) major life areas.
- 3) The Appellant demonstrated a substantial deficit in the major life area of *Self-Care and Receptive or Expressive Language*.
- 4) Because the Appellant only has two (2) substantial deficits in the six (6) major life areas identified in the I/DD Waiver Program policy, the functional component could not be established.
- 5) Because the Appellant did not meet the functional requirements, medical eligibility could not be established and the Respondent must deny the Appellant's application 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 August 2021.**

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**Danielle C. Jarrett**  
**State Hearing Officer**