



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

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Jolynn Marra
Interim Inspector General

August 24, 2021



RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.: 21-BOR-1754

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
Janice Brown, KEPRO

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

█, A MINOR,

Appellant,

v.

ACTION NO.: 21-BOR-1754

**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 █. This hearing was held in accordance with the provisions of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on August 11, 2021 on an appeal filed with the Board of Review on July 2, 2021.

The matter before the Hearing Officer arises from the Respondent's June 15, 2021 decision to deny the Appellant medical eligibility for the Medicaid Intellectual and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation and Assessment. The Appellant appeared *pro se* by his mother, █. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual §§ 513.6 through 513.6.4
- D-2 Medicaid I/DD Waiver Program Denial Letter, dated June 15, 2021
- D-3 Independent Psychological Evaluation (IPE), dated June 8, 2021
- D-4 Adaptive Behavior Assessment System, Third Edition (ABAS-3), dated June 8, 2021
- D-5 Medicaid I/DD Waiver Program Denial Letter, dated March 8, 2021
- D-6 IPE, dated February 22, 2021
- D-7 █, Individualized Education Plan (IEP), dated January 20, 2021
- D-8 █ Treatment Plan Review, period of review from July 25 through August 21, 2020
- D-9 █ Educational Assessment, dated June 3, 2020
- D-10 Comprehensive Behavioral Health Associates Discharge/Transfer Summary, dated March

- 5, 2021
- D-11 [REDACTED] Psychiatric Evaluation, signed April 13, 2018
- D-12 [REDACTED] Discharge Plan, dated June 13, 2018
- D-13 [REDACTED] Comprehensive Autism Spectrum Disorder Evaluation, dated August 12, 2019
- D-14 [REDACTED] Aftercare/Discharge Plan, dated November 12, 2020
- D-15 [REDACTED] Master Treatment Plan, dated August 24, 2020

Appellant's Exhibits:

- A-1 IPE, dated December 11, 2020

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) On March 8, 2021, the Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program and chose to obtain a second medical opinion.
- 2) On June 15, 2021, the Respondent issued a notice advising that the Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation did not support the presence of an eligible diagnosis. The notice specified, "severe autism is not supported by narrative, psychometric data nor diagnostic history" (Exhibit D-2).
- 3) At the time of the Respondent's June 15, 2021 denial, the Appellant was 9 years old (Exhibits D-11).
- 4) On April 12, 2018, the Appellant obtained a Psychiatric Evaluation at [REDACTED] which reflected diagnoses of Disruptive Mood Dysregulation Disorder, Oppositional Defiance Disorder, and Anxiety Disorder (Exhibit D-11).
- 5) On June 14, 2018, the Appellant was discharged from [REDACTED], where he received inpatient treatment for self-injury, aggression, and AWOL from June 7 through June 13, 2018.
- 6) The Appellant did not receive psychological testing during his treatment at [REDACTED] (Exhibit D-12).
- 7) On August 12, 2019, a registered licensed occupational therapist, [REDACTED], completed an Autism Diagnostic Observation Schedule (ADOS-2) with the Appellant and determined the Appellant had "minimal to no evidence of autism-spectrum related symptoms (Exhibit D-13).
- 8) The August 24, 2020 [REDACTED] master treatment plan reflected diagnoses of

Disruptive Mood Dysregulation Disorder, Attention Deficit and Hyperactivity Disorder, Autism Spectrum Disorder, Level 1, Borderline Intellectual Disability (Exhibit D-15).

- 9) During administration of the December 11, 2020 IPE, the Appellant refused to participate with the Kaufman Brief Intelligence Test (KBIT-2) and the Wide Range Achievement Test (WRAT 5) (Exhibit A-1).
- 10) The December 1, 2020 IPE Gilliam Autism Rating Scale (GARS-3) indicated an Autism Index score of 80 and narrative that the Appellant is likely on the Autism Spectrum (Exhibit A-1).
- 11) The Appellant's GARS-3 results were reliant upon parent rating.
- 12) The December 1, 2020 IPE reflected diagnosis of Disruptive Mood Dysregulation Disorder, Oppositional Defiant Disorder, Autism Spectrum Disorder, Level 1 (by history and current GARS-3), Borderline Intellectual Functioning (by history), and Attention Deficit Hyperactivity Disorder, combined presentation (by history) (Exhibit A-1).
- 13) The Appellant's January 20, 2021 Individualized Education Plan (IEP) reflected that the Appellant's IEP was developed under the exceptionality of Emotional Behavior Disorder and that he is placed in a special education environment 72% of his academic instruction time (Exhibit D-7).
- 14) The February 22, 2021 IPE reflected a full scale Intelligence Quotient (IQ) of 85, in the low average range of intelligence (Exhibit D-6).
- 15) On February 22, 2021, a GARS-3 reflected an Autism Index score of 92, which indicated that the Appellant "very likely" met criteria for a diagnosis of Autism, Level 2 (Exhibit D-6).
- 16) The February 22, 2021 IPE provided a diagnosis of Autism Spectrum Disorder, Level 1, Provisional Diagnosis (Exhibit D-6).
- 17) The June 8, 2021 IPE reflected a full scale IQ of 93, in the average range (Exhibit D-3).
- 18) On June 8, 2021, a GARS-3 reflected an Autism Index score of 109, which indicated that the Appellant "very likely" met criteria for a diagnosis of Autism, Level 3 (Exhibit D-3).
- 19) The June 8, 2021 IPE provided a diagnosis of Autistic Disorder (Exhibit D-3).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §§ 513.6 and 513.6.1.1 provides in part:

To be eligible for the Medicaid I/DD Waiver 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.

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.

BMS Manual § 513.6.2 provides in part:

To be medically eligible to receive Medicaid 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

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 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.

DISCUSSION

The Appellant contested the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program. The Appellant's representative argued that the Appellant has a diagnosis of Autism, Level 3, and should be eligible for the Medicaid I/DD Waiver Program. The Respondent argued that the documentation submitted did not support a diagnosis of Autism, Level 3.

To be medically eligible for the Medicaid I/DD Waiver Program, the Appellant had to meet medical eligibility criteria for diagnosis, functionality, need for active treatment, and require an ICF/ID Level of Care. To meet diagnostic eligibility criteria, the Appellant had to have a diagnosis of intellectual disability or a related condition that is chronic and severe. The Respondent testified that to be eligible for the Medicaid I/DD Waiver Program, the Appellant's diagnosis of Autism had to be qualified as a Level 3. The Respondent had to prove by a preponderance of evidence that the submitted documentation failed to establish that the Appellant had an eligible diagnosis.

The evidence verified that the Appellant did not have an eligible diagnosis of intellectual disability. The Appellant's representative argued that the Appellant's diagnosis of Autism should qualify him for the Medicaid I/DD Waiver Program.

The 2018 records failed to establish an eligible diagnosis of intellectual disability or Autism, Level 3. The [REDACTED] records reflected a diagnosis of Autism, Level 1; however, no narrative, testing, or other documentation was provided to establish that the Appellant was diagnosed with Autism, Level 3 during his [REDACTED] treatment period. The Appellant's IPE contained academic interventions related to an exceptionality of Emotional Behavior Disorder and did not verify an intellectual disability or Autism, Level 3 diagnosis.

During the hearing, the Respondent testified that GARS-3 results were reliant on parent ratings. The December 1, 2020, February 22 and June 8, 2021 GARS-3 results indicated that the Appellant likely has a diagnosis of Autism. The Appellant's Autism Index scores increased from 80 to 92 between December and February 2021. The Appellant's Autism Index scores further increased from 92 to 109 between February and June 2021.

The February 22, 2021 IPE provided a provisional diagnosis for Autism Spectrum Disorder, Level 1. During the hearing, the Respondent testified that a provisional diagnosis cannot be considered to establish eligibility for the Medicaid I/DD Waiver program. Even if the diagnosis reflected on the February 22, 2021 IPE had not been provisional, the diagnosis of Autism Spectrum Disorder, Level 1 does not meet the severity criteria for the Medicaid I/DD Waiver program. Although the June 8, 2021 IPE narrative indicated that the Appellant's Autism Index likely qualified him for Level 3 Autism, only a diagnosis of "Autistic Disorder" was established on the June 8, 2021 IPE.

During the hearing, the Respondent testified that the June 8, 2021 IPE was unreliable due to discrepancy from the diagnostic information present in other submitted documentation. Because the narrative and diagnoses present in the preponderance of records failed to corroborate the June 8, 2021 IPE and because the GARS-3 results significantly varied from December 2020 and June 2021, this Hearing Officer finds the June 8, 2021 GARS-3 results to be unreliable.

CONCLUSIONS OF LAW

- 1) To be medically eligible for the Medicaid I/DD Waiver Program, the Appellant had to meet medical eligibility criteria for diagnosis, functionality, need for active treatment, and require an ICF/ IID Level of Care.
- 2) To be eligible for the Medicaid I/DD Waiver Program, the Appellant must have an intellectual disability or a chronic and severe related condition.
- 3) To be eligible for the Medicaid I/DD Waiver Program, the Appellant's diagnosis of Autism had to be qualified as a Level 3.
- 4) The preponderance of evidence failed to establish that the Appellant has an eligible diagnosis of intellectual disability or Autism, Level 3.

- 5) Because the evidence failed to establish that the Appellant met the medical eligibility criteria for diagnosis, the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program was correct.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

ENTERED this 24th day of August 2021.

Tara B. Thompson, MLS
State Hearing Officer