



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
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September 30, 2021

Jolynn Marra
Interim Inspector General



RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-1791

Dear Ms. [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matters.

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Bureau for Medical Services
PC&A
KEPRO

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

██████████,

Appellant,

v.

Action No.: 21-BOR-1791

**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 found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on September 16, 2021, on an appeal filed July 12, 2021.

The matter before the Hearing Officer arises from the Respondent's April 23, 2021 decision and January 19, 2021 decision to deny the Appellant's application for participation in the I/DD Waiver Program due to unmet medical eligibility.

At the hearing, the Respondent was represented by Kerri Linton. The Appellant was represented by ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual (excerpt)
Chapter 513 – Intellectual and Developmental Disabilities Waiver (IDDW)
§§ 513.6 – 513.6.4
- D-2 Notice of Decision, dated April 23, 2021
- D-3 Independent Psychological Evaluation (IPE), dated March 24, 2021
- D-4 Letter from ██████████, regarding the Appellant

- D-5 Summary of Office visit, dated April 26, 2018
- D-6 Patient Chart Report, [REDACTED], dated March 9, 2020 (part 1 of 2)
- D-7 Patient Chart Report, [REDACTED], dated March 9, 2020 (part 2 of 2)
- D-8 Eligibility Summary, undated
- D-9 Medical records, undated
- D-10 Independent Psychological Evaluation (IPE), dated December 20, 2020
- D-11 Notice of Decision, dated January 19, 2021
- D-12 [REDACTED] County Schools Individualized Education Program, dated January 13, 2017
- D-13 Psychological Evaluation, dated May 15, 2008

Appellant's Exhibits:

- A-1 Letter from [REDACTED], M.D., dated August 16, 2021
- A-2 Letter from [REDACTED], M.A., dated August 23, 2021
- A-3 Progress notes, dated May 27, 2021
- A-4 Duplicate to Exhibit D-3
- A-5 Duplicate to Exhibit D-12
- A-6 Duplicate to Exhibit D-13

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) The Appellant was an applicant for the I/DD Waiver Program.
- 2) The Appellant is an adult female, born February 28, 1998. (Exhibit D-13)

- 3) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDD Waiver Program, including eligibility determination.
- 4) Kerri Linton, a licensed psychologist employed by PC&A, made the eligibility determinations regarding the Appellant.
- 5) The Respondent denied the Appellant's application for the IDD Waiver Program in a notice dated January 19, 2021 (Exhibit D-11).
- 6) This notice (Exhibit D-11) provided the basis for denial as "Documentation provided for review does not indicate an eligible diagnosis for the IDD Waiver program of either Intellectual Disability or a Related Condition which is severe."
- 7) The Appellant requested a second medical evaluation and new determination of eligibility.
- 8) The Respondent reviewed the Appellant's second medical evaluation and issued a second denial notice dated April 23, 2021 (Exhibit D-2).
- 9) The second notice (Exhibit D-2) indicated that the Appellant was denied because, "Documentation provided for review does not confirm the presence of an eligible diagnosis for the IDD Waiver program with concurrent substantial adaptive deficits during the developmental period (prior to the age of 22). The need for an ICF level of care is not supported by the documentation provided for review."
- 10) The Appellant was diagnosed with Mild Intellectual Disability; Major Depressive Disorder, Single Episode, Moderate, by history; and, Generalized Anxiety Disorder, by history, in a March 2021 psychological evaluation (Exhibit D-3).
- 11) The evaluating psychologist for the March 2021 evaluation (Exhibit D-3) administered the Reynolds Intellectual Assessment Scales, Second Edition (RIAS-2), to assess the Appellant's intellectual functioning, but noted, "...it is believed that the results from the RIAS-2 are an underestimate of her true intellectual potential, as her scores are significantly lower than the reported scores from the WAIS-IV and WAIS-II."
- 12) The Appellant was tested using the Weschler Abbreviate Scale of Intelligence, Second Edition (WASI-II), during the March 2021 evaluation and obtained a Full Scale IQ of 59. (Exhibit D-3)
- 13) Ms. Linton testified that the WASI-II Full Scale IQ result (Exhibit D-3) for the Appellant is unreliable because of a higher score achieved by the Appellant in December 2020.
- 14) A psychological evaluation of the Appellant was conducted in December 2020 (Exhibit D-10).

- 15) The Appellant was diagnosed with Borderline Intellectual Functioning; Borderline Personality Disorder, Provisional; and, Persistent Depressive Disorder, with Intermittent Major Depressive Episodes. (Exhibit D-10)
- 16) Ms. Linton testified that provisional diagnoses are not considered in determining eligibility for the I/DD Waiver Program.
- 17) The Appellant's intellectual functioning was assessed in December 2020 (Exhibit D-10) utilizing the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV), and the Appellant obtained a Full Scale IQ result of 72.
- 18) The Appellant's Individualized Education Program (IEP) documents from ██████ County Schools, referenced a diagnosis of Mild Intellectual Disability, but did not provide test scores in support of the referenced diagnosis. (Exhibit D-12)
- 19) A psychological evaluation of the Appellant was conducted in May 2008 (Exhibit D-13).
- 20) During the May 2008 evaluation (Exhibit D-13), the Appellant was administered the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), resulting in a Full Scale IQ test score of 78.
- 21) The psychologist from the May 2008 evaluation (Exhibit D-13) noted, “[Appellant] has no major medical or psychiatric diagnoses.”
- 22) In her summary, the psychologist from the May 2008 evaluation (Exhibit D-13) noted, “Her general cognitive ability, as estimated by the WISC-IV, is in the Borderline range.”
- 23) Letters provided (Exhibits A-1 and A-2) regarding the Appellant did not provide diagnoses or test scores.
- 24) Progress notes regarding the Appellant dated May 27, 2021 – subsequent to both decisions by the Respondent – reference a diagnosis of Mild Mental Retardation for the Appellant, but do not provide test scores.

APPLICABLE POLICY

The policy regarding the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513.

At §513.6.2, this policy addresses initial medical eligibility, and reads, “In order to be eligible to receive IDDW 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.”

At §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.”

DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent’s decisions to deny her application for the I/DD Waiver Program based on its findings that she did not establish medical eligibility. The Respondent must show by a preponderance of the evidence that the Appellant did not establish medical eligibility for the program.

The Appellant applied for the I/DD Waiver Program and was denied in a January 19, 2021 notice. The Appellant requested a second medical evaluation and was denied again on April 23, 2021. Testimony from the Respondent and both denial notices to the Appellant provide the basis for these denials as the lack of an eligible diagnosis which is severe.

The Respondent relies on diagnoses and test scores to support the diagnoses offered. Numerous documents submitted for hearing reference diagnoses without test scores, or test scores that do not support the diagnosis given. Ms. Linton provided her credentials and education regarding both psychological testing and the I/DD Waiver Program, and considerable deference is given to her expert testimony. Ms. Linton testified that test scores may underestimate an individual’s intellectual functioning but may not overestimate it. Additionally, the Appellant’s evaluating psychologist from the IPE conducted after the Respondent’s first denial of medical eligibility for the I/DD Waiver Program noted that the Appellant’s RIAS-2 scores were “an underestimate of her true intellectual potential.” Ms. Linton additionally testified that provisional diagnoses are not considered and that diagnoses related to mental illness are specifically excluded from consideration for I/DD Waiver Program medical eligibility.

The test scores and diagnosis from the Appellant’s March 2021 IPE (Exhibit D-3) are given little weight, given both the evaluating psychologist’s remarks and the change in test scores from the previous evaluation. During the Appellant’s December 2020 IPE (Exhibit D-10), test scores for the Appellant showed a Full Scale IQ of 72 – outside the range to support an eligible diagnosis for I/DD Waiver Program. During a March 2008 (Exhibit D-13) psychological evaluation, the Appellant received a Full Scale IQ test score of 78. In March 2021, the Appellant’s Full Scale IQ test result was 59, and, based on the expert testimony provided, is considered an underestimate of the Appellant’s intellectual functioning and not supportive of an eligible diagnosis for the I/DD Waiver Program.

The Appellant’s aunt, [REDACTED], provided testimony and documentation (Exhibits A-1 and A-2) to describe the Appellant’s condition. Mr. [REDACTED] testified that the Appellant “can’t comprehend,” and noted the Appellant is “smart in a lot of ways” but not “in the way she should be left alone.” She noted the Appellant can feed herself but is not allowed to use the stove. She testified the Appellant “has to be shown things over and over.” Letters from medical professionals attending the Appellant (Exhibits A-1 and A-2) offered opinions that the Appellant would benefit from approval for the I/DD Waiver Program but did not offer diagnoses or results

of test scores. While this information provides important qualitative information about the Appellant, the severity of a diagnosis is a critical component of an eligible diagnosis for the I/DD Waiver Program, and that severity is quantified by test scores.

Based on the reliable information provided at the hearing, the Appellant did not establish an eligible diagnosis for the I/DD Waiver Program which is severe. Without an eligible diagnosis, the Respondent was correct to deny the Appellant's application for the I/DD Waiver Program.

CONCLUSIONS OF LAW

- 1) Because the reliable information provided at the hearing does not support an eligible diagnosis for the Appellant which is severe, the Appellant has not met the diagnostic component of medical eligibility for the I/DD Waiver Program.
- 2) Because the Appellant did not establish medical eligibility, the Respondent must deny the Appellant's application for I/DD Waiver services.

DECISION

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

ENTERED this ____ Day of September 2021.

**Todd Thornton
State Hearing Officer**