



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1027 N. Randolph Ave.  
Elkins, WV 26241

Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Interim Inspector General

October 14, 2021

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 21-BOR-1980

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 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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Stacy Broce, BMS, WVDHHR  
Janice Brown, KEPRO

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

██████████,

**Appellant,**

v.

**Action Number: 21-BOR-1980**

**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 October 6, 2021, on an appeal filed August 23, 2021.

The matter before the Hearing Officer arises from the May 25, 2021 decision by the Respondent to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program.

At the hearing, the Respondent appeared by Kerri Linton, Long-Term Care Clinical Consultant, PC&A. The Appellant was represented by her mother, ██████████. Appearing as witnesses for the Appellant were ██████████, Appellant's father, and ██████████, Appellant's uncle. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 I/DD Waiver Services Manual Chapter 513.6
- D-2 Notice of Decision dated May 25, 2021
- D-3 Independent Psychological Evaluation dated April 15, 2021
- D-4 ██████████ Schools Psychoeducational Evaluation dated February 21, 2012
- D-5 Section 504 Plan for school year 2010-2011, ██████████
- D-6 Bruninks-Oseretsky Test of Motor Proficiency-2 Report dated December 19, 2012
- D-7 Genetic Testing Report dated May 20, 2012
- D-8 West Virginia University Neuropsychological Evaluation dated May 23, 2012
- D-9 ██████████ Neuropsychological Evaluation dated October 15, 2012
- D-10 ██████████ statement dated January 6, 2011

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) On May 25, 2021, the Appellant, currently age 27, was notified that her application for the I/DD Waiver Medicaid Program was denied because her condition does not meet required medical criteria for the program (Exhibit D-2).
- 2) The notification states that “documentation provided for review does not indicate an eligible diagnosis of either Intellectual Disability or a Related Condition which is severe either at present or during the developmental period (prior to the age of 22)” (Exhibit D-2).
- 3) An Independent Psychological Evaluation (IPE) completed on April 15, 2021 lists diagnoses of Autistic Disorder, Attention Deficit Hyperactivity Disorder (ADHD) (predominately inattentive type), Persistent Depressive Disorder and Noonan Syndrome (Exhibit D-3).
- 4) Historical data provided on the April 15, 2021 IPE indicates that the Appellant achieved a full-scale IQ score of 88 in February 2012, a full-scale IQ score of 80 in May 2012, and full-scale IQ score of 89 in October 2012 (low average intellectual functioning range) (Exhibit D-3). (Scores of 55 and below are considered eligible scores to establish medical eligibility for the I/DD Waiver Medicaid Program).
- 5) The Appellant achieved a full-scale IQ score of 80 on the WAIS-IV test administered on April 15, 2021 (Exhibit D-3).
- 6) The Appellant received standard scores ranging from 73 to 91 in the areas of math computation, sentence comprehension, reading composite, word reading and spelling on the WRAT-5 test administered on April 15, 2021 (Exhibit D-3). (Standard scores of 55 and below are considered as eligible scores for the I/DD Waiver Program).
- 7) The Appellant received an autism index score of 92 during the April 2021 evaluation, indicating that the probability of Autism Spectrum Disorder was very likely, with a severity level of 2 (Exhibit D-3). (A severity level of 3 is required to establish the medical eligibility severity component for the I/DD Waiver Program).
- 8) A Psychoeducational Evaluation administered in February 2012, when the Appellant was 17 years old, revealed a full-scale IQ score of 87 (Exhibit D-4).
- 9) A Section 504 plan, completed when the Appellant was 16 years old, addresses classroom accommodations consistent with ADHD and not those of intellectual disability (Exhibit D-5).

- 10) A Bruninks-Oseretsky Test of Motor Proficiency-2 Report, completed when the Appellant was 18 years old, indicates that the Appellant was in a regular classroom with a 504 Plan, and was preparing to graduate from high school (Exhibit D-6).
- 11) A Genetic Testing Report dated May 20, 2012 reveals a diagnosis of Noonan Syndrome (Exhibit D-7).
- 12) A Neuropsychological Evaluation dated May 23, 2012 indicates that the Appellant achieved a full-scale IQ score of 80 on the WAIS-IV. Her word reading, sentence comprehension, spelling, math computation and reading composite scores were all in the average range compared to people of her age (Exhibit D-8).
- 13) A Neuropsychological Evaluation completed on October 15, 2012 addressed the Appellant's full-scale IQ score of 87 on the Weschler Intelligence Scale for Children- 4<sup>th</sup> Edition completed in 1997. The Appellant attained a full-scale standard score of 88 on the Kaufman Assessment Battery for Children-2<sup>nd</sup> Edition in 2012. She was determined to be in the low average range of intellectual functioning (Exhibit D-9).
- 14) A diagnosis statement from [REDACTED] dated January 6, 2011, lists a diagnosis of learning disorder (NOS) and cites low average intellectual and cognitive abilities.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513.6.2 (Exhibit D-1) state:

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 I/DD Waiver 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 the 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 in *Section 513.6.2.2 Functionality*.

### **DISCUSSION**

In order to establish medical eligibility for participation in the I/DD Waiver Program, an individual must meet the diagnostic, functionality and need for active treatment criteria.

The Respondent's representative, Kerri Linton, testified that there is no documentation to verify that the Appellant has an eligible condition that meets diagnostic/severity requirements and manifested prior to age 22.

The Appellant's mother testified that the Appellant received a PDD NOS diagnosis from a doctor when she was 18 years of age. Ms. Linton indicated that she had not been provided with that information, but does not believe the diagnosis would have met diagnostic requirements.

### **CONCLUSIONS OF LAW**

- 1) To establish medical eligibility for the I/DD Waiver Medicaid Program, an applicant must meet the diagnostic, functionality and need for active treatment criteria.
- 2) No documentation was provided to confirm that the Appellant had a diagnosis of intellectual disability with concurrent substantial deficits that 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.
- 3) As the Appellant does not meet diagnostic criteria, the Respondent acted correctly in denying her application for the I/DD Waiver Medicaid Program.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Respondent's action to deny the Appellant's application for benefits under the I/DD Waiver Medicaid Program.

**ENTERED this 14th Day of October 2021.**

---

**Pamela L. Hinzman  
State Hearing Officer**