



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

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Board of Review  
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Jolynn Marra  
Interim Inspector General

October 27, 2021



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 21-BOR-2046

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  
Kerri Linton, Psychological Consultation & Assessment

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

████████████████████,

**Appellant,**

v.

**ACTION NO.: 21-BOR-2046**

**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 October 13, 2021 on an appeal filed with the Board of Review on September 7, 2021.

The matter before the Hearing Officer arises from the Respondent's June 28, 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 Linda Workman, Psychological Consultation & Assessment (PC&A). The Appellant appeared *pro se* by ██████████. Witnesses appearing on behalf of the Appellant included ██████████, ██████████, ██████████, ██████████, West Virginia Division of Rehabilitation; ██████████, ██████████ County Special Education; and ██████████ Deasy, ██████████ County Special Education. 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 BMS Notice, dated June 28, 2021
- D-3 Independent Psychological Evaluation, dated June 21, 2021
- D-4 WRAT 5 and WAIS-IV, dated June 21, 2021
- D-5 Adaptive Behavior Assessment System, Third Edition (ABAS-3), dated June 21, 2021  
████████████████████ Progress Reports
- D-6 Individualized Education Program (IEP)

**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 participation in the Medicaid I/DD Waiver Program.
- 2) On June 28, 2021, the Respondent issued a notice advising that the Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program because the documentation submitted did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for eligibility (Exhibit D-2).
- 3) When determining the Appellant's medical eligibility, the Respondent reviewed the June 21, 2021 Independent Psychological Evaluation (IPE) and the October 14, 2020 Individualized Education Program (IEP) (Exhibit D-2).
- 4) The Appellant has a diagnosis of Intellectual Disability, moderate (Exhibit D-3).
- 5) The Appellant has substantial adaptive deficits in the areas of *self-care* and *learning* (Exhibit D-2).
- 6) The Appellant does not have substantial adaptive deficits in the areas of *self-direction*, *receptive or expressive language*, *mobility*, or *capacity for independent living* (Exhibits D-2, D-3, D-5, and D-6).
- 7) On the June 21, 2021 Adaptive Behavior Assessment System, Third Edition (ABAS-3), the Appellant had scaled scores of 1 in the areas of *functional academics*, and *leisure*; a scaled score of 2 in the area of *self-care*; a scaled score of 4 in the area of *health & safety*; scaled scores of 5 in the areas of *communication*, *community use*, *home living*, and *self direction*; and a scaled score of 7 in the area of *social* (Exhibits D-3 and D-5).
- 8) The June 21, 2021 IPE narrative reflected significant delays in *functional academics*, *leisure*, and *self-care*; moderate delay in *communication*, *community use*, *home living*, and *health & safety*; and mild delay in *social* (Exhibit D-3).
- 9) On the December 18, 2018 ABAS-3, the Appellant had a score of 67 for *conceptual domain*; a score of 91 for *social domain*; a score of 77 for *practical domain*; and a score of 75 for *composite score* (Exhibit D-6).

## 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:**

For the Medicaid I/DD Waiver Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

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 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.

## DISCUSSION

The Respondent denied the Appellant medical eligibility for the Medicaid I/DD Waiver Program due to lacking substantial adaptive deficits in three or more of the six major life areas identified by the policy. The Appellant's representative argued that the Appellant requires Medicaid I/DD Waiver Program services due to her constant need for supervision to meet her daily needs and maintain her safety.

To be medically eligible for the Medicaid I/DD Waiver Program, the Appellant had to meet criteria in the categories of diagnosis, functionality, need for active treatment, and requirement of ICF/IID level of care. The evidence verified that the Appellant met medical eligibility criteria in the category of diagnosis. To meet the medical eligibility criteria in the category of functionality, the Appellant had to have substantial deficits in at least three of the six identified major life areas as evidenced by relevant test scores and narrative descriptions contained in the documentation submitted for review.

The Respondent had to prove by a preponderance of evidence that the relevant test scores and narrative descriptions contained in the Appellant's documentation failed to establish that the Appellant had substantial deficits in at least three of the six major life areas. The evidence verified that the Appellant had substantial adaptive deficits in the areas of *self-care* and *learning*.

### Test Scores and Narrative

The 2018 ABAS-3 test scores ranged from 67 to 91. The Respondent testified that to fall within the less than one-percentile threshold required by policy, the 2018 ABAS-3 score results would have to be 61 or below.

The Respondent testified that ABAS-3 scaled scores must be scores of 1 or 2 to demonstrate a substantial functioning deficit in the less than one-percentile as required by policy. The 2021 ABAS-3 scaled scores reflected scores of 1 in the areas of *functional academics*, and *leisure* and a scaled score of 2 in the area of *self-care*. The remaining ABAS-3 scaled scores were above the medical eligibility threshold.

In the area of *capacity for independent living*, the policy specifies that three of the sub-domains must be substantially limited to meet the criteria in this area. The evidence established that the Appellant was substantially limited in only one sub-domain of this area — *leisure*. The IPE narrative reflected that the Appellant has a moderate delay in *community use, home living, health & safety*, and a mild delay in *social skills*. While the IPE narrative and the Appellant's witness' testimony describe the Appellant to exhibit limitations in the area of *employment, and health & safety*, the policy requires deficits to be established by scores and corroborating narrative. The evidence failed to establish that the Appellant had substantial limitations in the area of *capacity for independent living*.

The Appellant's representative and witness' testimony asserted that the Appellant required prompting and supervision to assure safety, complete daily living tasks, and maintain employment. While the Appellant's limitations are acknowledged by supportive testimony, no relevant test scores corroborated by narrative descriptions were entered as evidence to verify that the Appellant had substantial deficits in additional major life areas.

### **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 meet the medical eligibility criteria in the category of functionality, the Appellant had to have substantial deficits in at least three of the six identified major life areas as evidenced by relevant test scores and narrative descriptions contained in the documentation submitted for review.
- 3) The preponderance of evidence established that the Appellant had substantial deficits in two of the six identified major life areas as evidenced by relevant test scores and narrative descriptions.
- 4) The Respondent correctly denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program.

**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 27<sup>th</sup> day of October 2021.

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**Tara B. Thompson, MLS**  
State Hearing Officer