



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

October 19, 2021

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 21-BOR-2082

Dear Mr. [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,

Kristi Logan
Certified 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

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

██████, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 21-BOR-2082

**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 Protected Individual. 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 September 9, 2021.

The matter before the Hearing Officer arises from the August 16, 2021 decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Charlie Bowen and Keri Linton, consulting psychologists for the Bureau for Medical Services. The Appellant appeared by ██████, guardian with Child Protective Services. The witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial dated August 16, 2021
- D-3 Independent Psychological Evaluation dated August 10, 2021
- D-4 Psychological Evaluation dated January 3, 2020
- D-5 Abraxas 1 Treatment Plan dated May 7, 2021

Appellant's Exhibits:

- A-1 Report of Psychological Evaluation dated January 23, 2012
- A-2 Psychological Evaluation dated August 17 and August 19, 2015

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 applied for services under the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on August 10, 2021, in conjunction with the I/DD Waiver Program application (Exhibit D-3).
- 3) The Appellant was diagnosed with borderline intellectual functioning, major depressive disorder, oppositional defiance disorder and attention deficit/hyperactivity disorder (ADHD) (Exhibit D-3).
- 4) The Respondent issued a Notice of Denial on August 16, 2021, advising that the Appellant's application had been denied as the documentation provided did not indicate the presence of an Intellectual Disability or related condition which is severe. Additionally, the documentation did not support the presence of at least three (3) substantial adaptive deficits of the six (6) major life areas (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services 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 ICF/IID Level of Care.

Diagnosis

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, if severe and chronic in nature, may 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 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 substantial deficits out of the six identified major life areas listed in Section 513.6.2.2.

Functionality

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 Intellectual Disability (ID) normative populations when ID 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, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

Active Treatment

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and

generic training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

DISCUSSION

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Respondent denied the Appellant's application as he did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, which is severe. The Appellant was administered the Weschler Adult Intelligence Scale (WAIS) during the August 2021 psychological evaluation and received a full-scale intelligence quotient (IQ) of 74, falling within the borderline intellectual functioning range. The Appellant was also diagnosed with major depressive disorder, oppositional defiance disorder and ADHD. Charlie Bowen, witness for the Respondent, testified that a severe intellectual disability would be determined by an IQ score of 55 or below and a mild intellectual disability evidenced by an IQ score of 70 or below.

Mr. Bowen referred to previous psychological evaluations for the Appellant that were submitted with his I/DD Waiver application. In January 2020, the Appellant received an IQ score of 63, an IQ score of 56 in 2017 and a score of 58 in 2014 (Exhibits D-3, D-4 and A-2). Mr. Bowen testified that although previous IQ scores for the Appellant were in the mild intellectual disability range, the current score of 74 negates these scores as an individual cannot score higher on an IQ test than their cognitive functioning allows. Mr. Bowen surmised that the Appellant's ADHD and psychotropic medications may have interfered with the Appellant's ability to test to his fullest intellectual ability in the past.

The Appellant's guardian, [REDACTED], testified that the Appellant was approved for I/DD Waiver services in May 2020, and was placed on a waiting list for an available slot for services. Mr. [REDACTED] argued the Appellant has historically had low IQ scores and felt that his current psychiatric placement was falsely reporting his progress to allow for his discharge. Mr. [REDACTED] stated that the Appellant will turn 18 years old within the year, and he is trying to prepare him for his future.

Keri Linton did not dispute that the Appellant was previously approved for I/DD Waiver services in May 2020 based upon an IQ score of 68. The Appellant's guardian declined I/DD Waiver services in September 2020 when he was admitted to a residential psychiatric facility. Ms. Linton reiterated that the Appellant's ADHD can affect his ability to perform during intelligence testing, adding that the Appellant functions well when his ADHD is managed.

Policy requires the presence of an Intellectual Disability, or a related condition that is severe, to meet the diagnostic criteria for services under the I/DD Waiver Program. Whereas the Appellant

has been diagnosed with a borderline intellectual disability, he does not meet the severity criteria to qualify for services under the I/DD Waiver Program. The Respondent's denial of the Appellant's application for I/DD Waiver services is affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, an individual must meet the diagnostic criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The Appellant was diagnosed with borderline intellectual functioning.
- 3) The Appellant does not have an intellectual disability that is considered severe.
- 4) The Appellant does not meet the diagnostic criteria for services under the I/DD Waiver Program.

DECISION

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

ENTERED this 19th day of October 2021.

Kristi Logan
Certified State Hearing Officer