



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
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Jolynn Marra  
Interim Inspector General

December 14, 2021

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 21-BOR-2295

Dear [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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

cc: Stacy Broce, BMS  
Kerri Linton, PC&A

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 21-BOR-2295**

**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 December 9, 2021, on an appeal filed October 28, 2021.

The matter before the Hearing Officer arises from the September 23, 2021, decision of the Respondent to deny the Appellant's medical eligibility for services under the I/DD Waiver program.

At the hearing, the Respondent appeared by Kerri Linton, a consulting licensed psychologist for the Bureau for Medical Services. The Appellant appeared by his mother █. All 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 September 23, 2021
- D-3 Independent Psychological Evaluation dated August 18, 2021

**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 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) The Appellant was five (5) years old at the time of application.
- 3) As part of the I/DD application process, an Independent Psychological Evaluation (IPE) was conducted with the Appellant and his mother on August 18, 2021. (Exhibit D-3)
- 4) The IPE documents that the evaluating psychologist diagnosed the Appellant with Autism Spectrum Disorder, Level 2, with impairments in Intellect and Language, Requiring Substantial Supports. (Exhibit D-3)
- 5) A Childhood Autism Rating Scale (CARS-ST) was administered, as part of the IPE, to determine the severity of the Appellant's diagnosis. Scores in the range of 29 to 36 represent a Level 2 or mild to moderate symptoms of autism, with scores 37 and above representing a Level 3 or severe symptoms of autism.
- 6) The Appellant received a total score of 33 on the CARS-ST, which determined a Level 2, mild to moderate, autism rating.
- 7) The Respondent issued a Notice of Denial on September 23, 2021, informing the Appellant of the denial of his waiver application. (Exhibit D-2). The notice documents in part, "documentation provided for review does not indicate an eligible diagnosis of either Intellectual Disability or a Related Condition which is severe."
- 8) The Appellant had the right to a second psychological evaluation if completed within sixty (60) days of the initial denial date. (Exhibit D-2)
- 9) The deadline for the Appellant to complete a second psychological examination was November 21, 2021.
- 10) On November 18, 2021, the Appellant requested to complete a second psychological examination as outlined in the Notice of Denial. (Exhibit D-2)
- 11) As of December 9, 2021, the Appellant failed to complete the necessary documentation to proceed with the second psychological examination.

## **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 75<sup>th</sup> 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**

Policy governs that to be eligible for the I/DD Waiver Program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment, and the requirement of ICF/IDD level of care. Based on the information submitted for an eligibility determination, the Respondent denied the Appellant's application due to a failure to meet the diagnostic eligibility criteria. To meet eligibility for this criteria, the Appellant must have a diagnosis of an intellectual disability or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. The Respondent had to prove by a preponderance of evidence that the documentation submitted with the Appellant's application failed to meet the established diagnostic criteria.

Kerri Linton, a consulting Licensed Psychologist for the Bureau of Medical Services, testified that the eligibility criteria for the I/DD Waiver program is sequential and the Appellant failed to meet the initial diagnostic eligibility criteria. Ms. Linton acknowledged that the Appellant's diagnosis of Autism Spectrum Disorder, Level 2, would fall under a related condition for diagnostic consideration, but the supporting documentation provided in the IPE failed to establish that the diagnosis was in the severe range. Ms. Linton testified that Autism Spectrum Disorder has diagnostic categories ranging from Level 1 to Level 3 and the I/DD Waiver Program recognizes a

Level 3 diagnosis as a severe condition. Ms. Linton testified that as part of the IPE, a Childhood Autism Rating Scale (CARS-ST) was administered to determine the severity of the Appellant's autism. Testimony revealed that a severe range of autism is achieved when an individual scores 37 or above on the evaluated categories. Ms. Linton testified that the Appellant's raw scores of 33 represented a mild to moderate range of autism and failed to support a severe diagnosis.

██████████, the Appellant's representative, testified that she was unaware that an autism diagnosis had to be in the Level 3 range to be considered severe. ██████████ expressed interest in completing the second evaluation because she believed that her child has experienced changes in the last one to two months and he may be rated at a higher level with additional consideration. During a prehearing conference between both parties on November 18, 2021, ██████████ did express interest in completing a secondary medical evaluation. Due to the expiration of the timeframe to make the request, ██████████ was referred to KEPRO. In conjunction with the Bureau of Medical Services, KEPRO opted to allow ██████████ the opportunity to complete the second evaluation for her child. At the time of request for the second evaluation, ██████████ did not complete the necessary paperwork to select a psychologist to perform the secondary evaluation. The Respondent contacted ██████████ again on November 30, 2021, regarding the necessary documentation and received no response to their inquiry. ██████████ related her own confusion concerning the second evaluation and the hearing process, believing that she could not complete the paperwork for the second evaluation until a determination was made by the Board of Review. Because the Appellant's representative did not complete the necessary paperwork for a second medical evaluation timely and has decided to move forward with the fair hearing process, she is relying on this Hearing Officer's determination. The Appellant's representative reserves the right to reapply for I/DD services at any time.

Policy allows an applicant the opportunity to complete a second medical evaluation within sixty days of a corresponding denial; however, in this matter the necessary documentation to initiate that process, specifically the selection of an evaluating psychologist, was never returned for consideration. Therefore, any decision must be based solely on the information submitted with the initial application. The Appellant was diagnosed with Autism Spectrum Disorder, a related condition under the program guidelines; however, the documentation submitted with the application did not support the diagnosis to meet the severity criteria. Since the Appellant's diagnosis failed to meet the diagnostic criteria, the Department was correct to deny the application for I/DD Waiver services. The Respondent's denial of the application for I/DD Waiver Services is affirmed.

### **CONCLUSIONS OF LAW**

- 1) An individual must meet diagnostic criteria of a diagnosis of an intellectual disability or a related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The Appellant did not present a diagnosis of an intellectual disability or a related condition which is considered severe.

- 3) The Appellant did 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 Respondent's denial of the Appellant's application for services under the I/DD Waiver Program.

**ENTERED this \_\_\_\_\_ day of December 2021.**

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Eric L. Phillips  
**State Hearing Officer**