



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

Bill J. Crouch
Cabinet Secretary

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

Jolynn Marra
Interim Inspector General

January 12, 2021

[REDACTED]

RE: [REDACTED] A PROTECTED INDIVIDUAL v. WV DHHR
ACTION NO.: 20-BOR-2622

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Psychological Consultation and Assessment
Bureau for Medical Services

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

■, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 20-BOR-2622

**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 January 6, 2021, on an appeal filed December 7, 2020.

The matter before the Hearing Officer arises from the November 18, 2020, decision by the Respondent to deny medical eligibility for the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by his mother, ■. Both 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 November 18, 2020
- D-3 Independent Psychological Evaluation dated November 8, 2020
- D-4 Independent Psychological Evaluation dated July 29, 2020
- D-5 Notice of Denial dated August 24, 2020
- D-6 Notice of Denial dated September 3, 2019
- D-7 Notice of Denial dated October 16, 2019
- D-8 Individualized Education Plan dated April 27, 1999

Appellant's Exhibits:

- A-1 Correspondence from [REDACTED], MD dated March 30, 2020
- A-2 Medical Records from [REDACTED] dated July 6, 2011 and [REDACTED] dated June 21, 2011
- A-3 Correspondence from [REDACTED] dated December 18, 2020
- A-4 Psychological Evaluation by [REDACTED] (undated)
- A-5 School Evaluation dated June 18, 1997
- A-6 Medical Records from [REDACTED] dated June 15, June 16, 1988, and October 11, 1988
- A-7 Report of SABB to Multi-Disciplinary Assessment Team dated June 22, 1987
- A-8 Reports from [REDACTED] for September 1987

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 38 years old at the time of the application.
- 3) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on July 29, 2020 in conjunction with the I/DD Waiver Program application (Exhibit D-4).
- 4) The Appellant was administered the Stanford-Binet Scales of Intelligence test on July 29, 2020 and received a full-scale Intelligence Quotient (IQ) of 79 (Exhibit D-4).
- 5) The Appellant was diagnosed with Borderline Intellectual Functioning and Schizophrenia, by history (Exhibit D-4).
- 6) The Respondent issued a Notice of Denial on August 24, 2020, advising that the Appellant's application was denied because the documentation failed to document a diagnosis of Intellectual Disability or related condition, which is severe (Exhibit D-5).
- 7) The Appellant requested a second psychological evaluation to determine eligibility for the I/DD Waiver Program which was conducted on November 8, 2020.
- 8) The Appellant was administered the Weschler Adult Intelligence Scale on November 8, 2020 and his full-scale IQ was determined as 59 (Exhibit D-3).
- 9) The Appellant was diagnosed with a Mild Intellectual Disability and Schizophrenia (Exhibit D-3).

- 10) The Respondent issued a Notice of Denial on November 18, 2020, advising that the Appellant's application was denied as documentation did not support the presence of an eligible diagnosis with concurrent substantial adaptive deficits during the developmental period, prior to age 22 (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 Appellant's application for the I/DD Waiver Program was denied as he did not meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, that manifested prior to age 22. The initial psychological evaluation conducted in July 2020 determined the Appellant's IQ as 79, falling within the borderline intellectual range. Keri Linton, consulting psychologist for the Respondent, testified that a score of 79 did not meet the threshold of a severe Intellectual Disability, therefore the Appellant's application was denied. Ms. Linton referred to policy in the exclusion of mental illness as an eligible diagnosis for I/DD Waiver eligibility.

The second psychological evaluation conducted in November 2020 determined the Appellant's IQ as 59, with a diagnosis of a mild Intellectual Disability. Ms. Linton testified that although the Appellant received an eligible diagnosis of Intellectual Disability which met the severity criteria, there was no information provided documenting the presence of a severe Intellectual Disability during the developmental period, prior to age 22.

The Appellant's mother, [REDACTED], testified that the Appellant was diagnosed with a chromosomal disorder, a deletion of the 12q chromosome, a genetic condition that is associated with cognitive and developmental delays (Exhibit A-2). Ms. [REDACTED] stated the Appellant received special education services for a learning disability throughout his childhood, surmising that an Intellectual Disability was present during the developmental period which was a result of the 12q chromosomal deletion.

The Weschler Intelligence Scale for Children administered to the Appellant during a psychological evaluation in 1988, when the Appellant was 6 years old, determined the Appellant's full-scale IQ as 80. The Appellant was diagnosed with borderline-mild Intellectual Disability which does not meet the criteria of a severe and chronic disability. No additional psychological evaluations were submitted to document the presence of a severe Intellectual Disability, or related condition, that manifested prior to age 22. Although the deletion of the 12q chromosome has been connected to diminished intellectual functioning, there was no evidence documenting the Appellant's genetic disorder affected his intellectual capacity during the developmental period.

Whereas the Appellant did not meet the diagnostic criteria of an Intellectual Disability or related condition that manifested during the developmental period, the Appellant did not meet the medical eligibility criteria for I/DD Waiver services.

CONCLUSIONS OF LAW

- 1) Policy requires that the diagnostic, functionality, need for active treatment criteria and the need for ICF/IID level of care must be met to establish medical eligibility for the I/DD Waiver Program.
- 2) To meet the diagnostic criteria, the applicant must have been diagnosed with an Intellectual Disability, which is severe, during the developmental period, prior to age 22.
- 3) The documentation submitted failed to establish that the Appellant had a diagnosis of an Intellectual Disability prior to age 22.
- 4) The Appellant does not meet the medical eligibility criteria for I/DD Waiver services.

DECISION

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

ENTERED this 12th day of January 2021.

Kristi Logan
Certified State Hearing Officer