



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
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Jolynn Marra  
Interim Inspector General

March 3, 2021

[REDACTED]

RE: [REDACTED], A MINOR v. WVDHHR  
ACTION NO.: 20-BOR-2698

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,

Angela D. Signore  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Kerri Linton, PC&A

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

█, A MINOR,

**Appellant,**

v.

**ACTION NO.: 20-BOR-2698**

**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 minor. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on February 3, 2021, on an appeal filed December 20, 2020.

The matter before the Hearing Officer arises from the December 4, 2020 determination by the Respondent to deny the Appellant's medical eligibility for services under the Intellectual and Developmental Disabilities Waiver (IDDW) Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services (BMS). The Appellant was represented by his mother, █. Appearing as a witness for the Appellant was his father, █. All witnesses were sworn, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual § 513.6 - 513.6.4
- D-2 BMS Notice of Denial, dated December 04, 2020
- D-3 Independent Psychological Evaluation (IPE), dated November 10, 2020
- D-4 █ County Schools Amendment to Individualized Education Program (IEP), dated September 23, 2020
- D-5 West Virginia Birth to Three Evaluation/Assessment Summary Report by Danielle Hemmings, dated May 28, 2019

**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 the Medicaid I/DD Waiver (IDDW) Program. (Exhibit D-2)
- 2) The Respondent, through the Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the IDDW Program, including eligibility determination. (Exhibit D-3)
- 3) The May 2019 Childhood Autism Rating Scale, Second Edition (CARS2-ST) evaluation completed by Danielle Hemmings, a licensed psychologist with the West Virginia Birth to Three program, showed that the Appellant did not meet the diagnosis of autism spectrum disorder or any other medical condition at that time. (Exhibit D-5)
- 4) The May 27, 2020 Individualized Education Program (IEP) completed by ██████ County Schools noted significant communication delays but determined that the Appellant did not meet the scoring totality for a diagnosis of Autism Spectrum Disorder. (Exhibit D-4)
- 5) On November 10, 2020, ██████, a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-3)
- 6) The November 10, 2020 IPE lists diagnoses of Autistic Disorder - Level 3 and Global Developmental Delay. (Exhibit D-3)
- 7) On December 04, 2020, the Respondent issued a notice advising the Appellant that her application for IDDW Program eligibility was denied due to lacking an eligible diagnosis of intellectual disability or a related condition which is severe. (Exhibit D-2)

### **APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual § 513.6 provides, in part:**

In order for an applicant to be found eligible for the IDDW Program, they must meet medical eligibility criteria. 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.

**BMS Manual § 513.6.2 provides, in part:**

To be medically eligible, the applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for treatment; and
- Requirement of ICF/IID Level of Care

**BMS Manual § 513.6.2.1 provides, in part:**

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 IDDW 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 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 under Section 513.6.2.2, Functionality.

**BMS Manual § 513.6.2.2 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, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc. if requested by the IP for review.

## DISCUSSION

Pursuant to policy, in order for an applicant to be found eligible for the IDDW Program, an individual must meet medical eligibility criteria. 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). To be medically eligible, criteria in each of the following categories must be met in order to be eligible for the IDDW program: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care. Failure to meet any one of the eligibility categories results in a denial of program services.

On December 04, 2020, the Appellant's application for the IDDW Program was denied due to not meeting the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, that manifested prior to age 22. To demonstrate that the Respondent correctly denied the Appellant eligibility, the Respondent had to demonstrate by a preponderance of evidence that the Appellant lacked an eligible diagnosis for IDDW Program eligibility purposes.

On May 27, 2020, when the Appellant was 3 years and 10 months of age, an Individualized Education Program (IEP) evaluation was completed by ██████████ County Schools. The Respondent testified that the findings in the IEP conclude the Appellant has significant communication needs. Of special interest in this report was documentation of a previously administered Battelle Developmental Inventory, Second Edition (BDI-2) test. While the date of the BDI-2 is unknown, the results did however, provide additional test data. The Respondent testified that while the narrative of the IEP and the scoring of the BDI-2 demonstrates there are significant communication needs present, the Appellant's scoring in the totality of the Developmental Quotient of the BDI-2 is 76. While a score of 76 is considered delayed as compared to other children in this age range, it does not meet the required scoring of the 55 and below threshold. In addition to the Developmental Quotient, the following scores were also measured: Adaptive Domain – 73, Personal Social Domain – 67, Communication Domain – 68, Motor Skills – 98, and Cognitive – 84. These scores, in totality, do not fall in the range of what is considered to be substantial as based on policy.

An additional assessment conducted May 2019 – when the Appellant was 2 years and 10 months of age – by Danielle Hemmings, a licensed psychologist with the West Virginia Birth to Three program, was submitted. According to the narrative of the report, a Childhood Autism Rating Scale, Second Edition (CARS2-ST) evaluation was done. The Respondent testified that the Appellant was assessed with a Total Raw Score of 24.5 – falling within the non-autistic range, and a T-Score measured at 34 – which is within typical limits, therefore not meeting the diagnosis of autism spectrum disorder or any other medical condition at that time.

Kerri Linton, consulting psychologist for the Respondent, testified that an Independent Psychological Evaluation (IPE) was completed on November 05, 2020, when the Appellant was 4 years and 3 months of age, by a licensed Independent Psychologist (IP), ██████████, with ██████████. A Developmental Profile 3 (DP3) was completed that registered standard scores of less than 50 in all areas, with exception of communication where the Appellant has a standard score of 55, indicative of substantial delay when compared to other children the

same age. Similarly, an Adaptive Behavior Assessment System, Third Edition (ABAS-III) was completed that also displayed substantial delays when compared to other children this age. Additionally, a Gilliam Autism Rating, Third Edition (GARS-3) was completed which registered an Autism Index score of 121, with a severity level of 3 - the most severe rating for Autism Spectrum Disorder. The IP then issued two diagnoses of 1) Autistic Disorder and 2) Global Developmental Delay. It should also be noted that in addition to the previously mentioned scores, the IP documented that “The [REDACTED] suggested the Appellant had previously been diagnosed with autism spectrum disorder, though records do not seem to substantiate this diagnosis.”

The Respondent testified that because Global Developmental Delay is not considered to be consistent with a diagnosis of an Intellectual Disability, and because it does not fall under the category of either a related condition or an Intellectual Disability, it is not an eligible diagnosis for the IDDW Program. The Respondent further explained that while Autism is, if severe, considered a related condition that may qualify an applicant for Waiver eligibility, the Appellant’s accompanying test data did not align with that of the IPE, therefore not meeting the provision that all accompanying documentation must support medical eligibility of IDDW Program. However, there is no specification in policy that requires the narrative of the IPE and supporting documentation to corroborate a diagnosis established by the IPE.

The Respondent explained that making an eligibility determination for younger children such as the Appellant can be quite challenging due to the difficulty in determining where the scores fall and whether the trajectory will be lifelong, chronic, severe, and likely to remain that way. Further, the Respondent explained, in children with autism this can be particularly challenging as they often do improve and make substantial gains in their adaptive skills. In addition, the Respondent stated that other than the significant concerns regarding the Appellant’s communication needs, agreement could not be found across the accompanying documentation submitted.

The Appellant’s parents contended that because the Appellant has an older sibling who has been diagnosed with Autism, and because the Appellant is exhibiting like behaviors mimicking that of his sibling, there is substantial worry with regard to the Appellant and the probability of an Intellectual Disability. Further, the Appellant’s parents testified that while some improvement is being made regarding his present symptoms and speech, there is still extensive concern for Autism.

To meet medical eligibility for the IDDW Program, the Appellant must have an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits that require an ICF level of care. As evidenced in the accompanying documentation, the Appellant’s IPE measured an Autism Index score of 121, with a severity level of 3 - the most severe rating for Autism Spectrum Disorder, while the IEP and Birth to Three evaluations measured that of significant delay. Because agreement could not be ascertained across the accompanying documentation due to the considerable differences generated by the young age of the Appellant and the difficulty in determining the trajectory of the Appellant’s capability, a judgement could not be conclusively determined from the evidence. Therefore, it is the finding of this Hearing Officer that submission of a new IPE will be needed to establish if the Appellant has an eligible related condition with concurrent substantial deficits in order to determine eligibility for the IDDW Program.

## CONCLUSIONS OF LAW

- 1) Policy for the I/DD Waiver Program requires the applicant to have been diagnosed with an Intellectual Disability or related condition, which is severe and results in impairment of intellectual functioning to meet diagnostic eligibility criteria.
- 2) A diagnosis of Intellectual Disability or a related condition which is severe could not be conclusively ascertained from the accompanying documentation.
- 3) The Appellant's substantial deficits criteria for the I/DD Waiver Program eligibility could not be ascertained from the accompanying test data.

## DECISION

It is the decision of the State Hearing Officer to **REMAND** the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program. It is hereby **ORDERED** to complete a new Independent Psychological Evaluation and a new determination of the Appellant's medical eligibility for the I/DD Waiver Program. The new determination of medical eligibility will be subject to appeal from the Appellant.

ENTERED this \_\_\_\_ day of March 2021.

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**Angela D. Signore**  
State Hearing Officer