



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

November 3, 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2081

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 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
Janice Brown, KEPRO
Kerri Linton, Psychological Consultation & Assessment

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-2081

**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 10, 2021.

The matter before the Hearing Officer arises from the Respondent's June 21, 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 Kerri Linton, Psychological Consultation & Assessment. The Appellant appeared *pro se* by ██████████. Both 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 Medicaid I/DD Waiver Program Denial Letter, dated June 21, 2021
- D-3 Premier Psychological Solutions Independent Psychological Evaluation (IPE) dated May 13, 2021
- D-4 IPE, dated September 16, 2020
- D-5 Medicaid I/DD Waiver Program Denial Letter, dated October 26, 2020
- D-6 ██████████ Individualized Education Program (IEP), dated February 23, 2009
- D-7 ██████████ IEP, dated February 21, 2011
- D-8 ██████████ records, dated October 30, 1995
- D-9 ██████████ Psychological Evaluation, dated June 13, 2006

- D-10 Evaluation Report of Physician/ Psychological, signed August 4, 2009
- D-11 Individualized Trait Analysis for [REDACTED], dated May 10, 2006

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) On October 26, 2020, the Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program due to lacking an eligible diagnosis and substantial adaptive deficits in three or more of the six major life areas. The Appellant chose to obtain a second medical opinion (Exhibits D-2 and D-5).
- 2) On June 21, 2021, the Respondent issued a notice advising that the Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program because the submitted documentation did not support the presence of an eligible diagnosis (Exhibit D-2).
- 3) At the time of the Respondent's June 21, 2021 denial, the Appellant was 29 years old (Exhibits D-3, D-6, D-8, D-9, and D-11).
- 4) The Appellant was diagnosed with Autism at age four (Exhibit D-8).
- 5) The Appellant has a diagnosis of Autism, Level 2 (Exhibits D-3, D-4).
- 6) The Appellant does not have a diagnosis of intellectual disability (Exhibits D-3, D-4, D-6 through D-11).

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:

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 § 513.6.2.1 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 that constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. If severe and chronic, Autism may be an eligible related condition.

DISCUSSION

The Appellant's representative testified that a hearing was requested to obtain clarification regarding the reason for denial. During the hearing, the Appellant's representative testified that he did not contest the results of the assessments but requested the Hearing Officer make a determination of whether the Respondent's denial of the Appellant's medical eligibility for the Medicaid I/DD Waiver Program was correct.

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. To meet diagnostic eligibility criteria, the Appellant had to have a diagnosis before age 22 of intellectual disability or a related condition that is chronic and severe. The Respondent testified that to be eligible for the Medicaid I/DD Waiver Program, the Appellant's diagnosis of Autism had to be qualified as a Level 3. The Respondent had to prove by a preponderance of the evidence that the submitted documentation failed to establish that the Appellant had an eligible diagnosis.

The evidence verified that the Appellant did not have an eligible diagnosis of intellectual disability. Pursuant to the evidence, the Appellant was diagnosed with Autism at age four. The evidence failed to establish that the Appellant met severity criteria of an Autism, Level 3 diagnosis before age 22. The 2020 and 2021 IPE assessments submitted for review verify that the Appellant has a current diagnosis of Autism, Level 2. Neither party submitted any evidence to refute the accuracy of the diagnostic materials submitted for review.

The policy requires that the Appellant have an eligible diagnosis to be medically eligible for the Medicaid I/DD Waiver Program. Because the preponderance of evidence verified the Appellant lacked an eligible diagnosis, the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program was correct.

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 be eligible for the Medicaid I/DD Waiver Program, the Appellant must be diagnosed before age 22 with an intellectual disability or a chronic and severe related condition.
- 3) To be eligible for the Medicaid I/DD Waiver Program, the Appellant's diagnosis of Autism had to be qualified as a Level 3.
- 4) The preponderance of evidence failed to establish that the Appellant has an eligible diagnosis of intellectual disability or Autism, Level 3.
- 5) Because the evidence failed to establish that the Appellant met the medical eligibility criteria for diagnosis, the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program was correct.

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 3rd day of November 2021.

Tara B. Thompson, MLS
State Hearing Officer