



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

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BOARD OF REVIEW
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Jolynn Marra
Interim Inspector General

December 15, 2021

[REDACTED]

Re: [REDACTED], A PROTECTED INDIVIDUAL V WV DHHR
ACTION NO.: 21-BOR-2275

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: Kerri Linton, Psychological Consultation & Assessment
Sarah Clendenin, Psychological Consultation & Assessment
Stacy Broce, Bureau for Medical Services

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

■■■■, A PROTECTED INDIVIDUAL,

Appellant,

v.

Action Number: 21-BOR-2275

**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 01, 2021.

The matter before the Hearing Officer arises from the May 03, 2021 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, ■■■■■■■■■■. All witnesses were sworn and the following documents were admitted into evidence.

** Observing for the Respondent was Charley Bowen, Psychological Consultation & Assessment (PC&A).

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual § 513.6- 513.6.4
- D-2 DHHR BMS Notice, dated May 03, 2021
- D-3 Independent Psychological Evaluation (IPE), dated March 09, 2021
- D-4 Independent Psychological Evaluation (IPE), dated October 22, 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) An application was made on behalf of the Appellant for services under the I/DD Waiver Program.
- 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) On October 22, 2019, ██████████, MA, a Licensed Psychologist, completed an Independent Psychological Evaluation (IPE) on the Appellant. (Exhibit D-4)
- 4) The October 22, 2019, IPE lists a diagnosis of Autistic Disorder. (Exhibit D-4)
- 5) On March 09, 2021, ██████████, MA, completed an additional IPE on the Appellant. (Exhibit D-3)
- 6) The March 09, 2021, evaluation diagnosed the Appellant with Autism Spectrum Disorder with Accompanying Intellectual and Language Impairments, Level 2, requiring substantial support. (Exhibit D-3)
- 7) On May 03, 2021, the Respondent issued a notice advising the Appellant that he was ineligible for IDDW Program benefits because documentation provided for review did not indicate the presence of an eligible diagnosis of either Intellectual Disability or a related condition which is severe. (Exhibit D-2)
- 8) The Respondent's determination was based on the review of "March 09, 2021 IPE; October 22, 2019 Psychological Evaluation by ██████████, MA." (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 for the IDDW Program, criteria in each of the following categories must be met: 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 May 03, 2021, the Appellant's application for the IDDW Program was denied based on failure to meet the diagnostic criteria of an eligible diagnosis of an Intellectual Disability, or related condition, that manifested prior to age 22. To establish 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.

Kerri Linton, consulting psychologist for the Respondent, testified that while Autism is, if severe, considered a related condition that may qualify an applicant for Waiver eligibility, the Appellant's diagnosis of Autism Spectrum Disorder, Level 2 did not meet the criteria for a severe related condition. In order to meet the severity level for IDDW Program medical eligibility, the Appellant had to have a diagnosis of Autism Spectrum Disorder, Level 3. Ms. Linton testified that an Independent Psychological Evaluation (IPE) was completed on March 09, 2021, when the Appellant was 7 years of age, by a licensed Independent Psychologist (IP), [REDACTED], with Premier Psychological Solutions. At that time, an attempt was made to administer the Wechsler Preschool and Primary Scale of Intelligence (WPPSI) test to obtain the full battery IQ; however, the Appellant was noncooperative and was unable to complete the assessment. Because of the Appellant's lack of participation, a Developmental Profile 3 (DP3) was administered to his mother which established delays in all areas. Additionally, a Childhood Autism Rating Scale, Second Edition (CARS2-ST) evaluation was completed. Ms. Linton testified that the Appellant was assessed with a Total Raw Score of 49.5 – falling within the severe symptoms of Autism Spectrum Disorder functioning range. The March 09, 2021 evaluation diagnosed the Appellant with Autism Spectrum Disorder with Accompanying Intellectual and Language Impairments, Level 2, requiring substantial support.

Ms. Linton further testified that a previous IPE was completed by [REDACTED], with Premier Psychological Solutions on October 22, 2019, when the Appellant was nearly 6 years of age. A DP3 was administered at that time with cognitive scores falling in the less than 50 range, again establishing delays in all areas. The Appellant's CARS2-ST evaluation completed this date was higher than that of the March 09, 2021 evaluation. The October 2019 evaluation assessed the Appellant with a Total Raw Score of 52, with a diagnosis rendered of Autistic Disorder. Therefore, Ms. Linton concluded that the evidence failed to establish the Appellant met the medical eligibility criteria for a qualifying diagnosis for IDDW Program eligibility purposes.

During the hearing, the Appellant's representative ([REDACTED]) testified the Appellant has historically been a danger to himself due to "being a runner, having no sense of danger, and by requiring constant supervision." [REDACTED] further testified that because the Appellant's previous IPE results conclude "severe symptoms of Autism Spectrum Disorder," she does not understand how this results in a Level 2 diagnosis, rather than that of a Level 3 as is required for IDDW Program eligibility. She further contended that because the Appellant has significant functioning impairments related to his Autism diagnosis, he would benefit from IDDW services, and should be determined eligible. The Appellant's Representative further testified that because the Appellant's Autism is so severe, and because he is so hard to manage as a single parent, she is unable to work and her family would benefit greatly from the assistance provided by the IDDW Program.

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/IID Level of Care. To be eligible for an ICF/IID Level of Care, the need must be verified by the IPE and corroborated by narrative descriptions of functioning and reported history. To demonstrate that the Appellant required an ICF/IID Level of Care, the evaluations of the Appellant had to reflect a need for intensive instruction, services, assistance, and supervision to learn new skills, maintain the 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 are provided in an ICF/IID setting.

While policy lists Autism as a related condition that could potentially qualify an applicant for IDDW services, in order to meet the severity level required for IDDW Program medical eligibility, the Appellant had to have a diagnosis of Autism Spectrum Disorder, Level 3. Because no evidence was entered to establish that the Appellant has an Autism Spectrum Disorder, Level 3 diagnosis, intellectual disability, or another related condition which is severe, the Appellant's diagnosis did not meet the criteria established by policy to establish an eligible diagnosis for Medicaid IDDW Program purposes.

CONCLUSIONS OF LAW

- 1) To be medically eligible for the Medicaid IDDW 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 IDDW Program, the Appellant must have an intellectual disability or a chronic and severe related condition.
- 3) Policy requires the Appellant's diagnosis of Autism Spectrum Disorder to be a Level 3.
- 4) The preponderance of evidence failed to establish that the Appellant has an eligible diagnosis of intellectual disability or Autism Spectrum Disorder, Level 3.
- 5) Because the evidence failed to establish that the Appellant met the medical eligibility criteria for a qualifying diagnosis, the Respondent's decision to deny the Appellant medical eligibility for the Medicaid IDDW Program is affirmed.

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 15th day of December 2021.

Angela D. Signore
State Hearing Officer