



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

December 14, 2021

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED], A MINOR v. WVDHHR
ACTION NO.: 21-BOR-2332

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: Kerri Linton, Psychological Consultation and Assessment
Stacy Broce, Bureau for Medical Services
Janice Brown, KEPRO

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

█, A MINOR,

Appellant,

v.

ACTION NO.: 21-BOR-2332

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on December 8, 2021 on an appeal filed with the Board of Review on November 5, 2021.

The matter before the Hearing Officer arises from the Respondent's October 6, 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 and Assessment. The Appellant appeared *pro se*. Appearing as a witness on behalf of the Appellant was █, the Appellant's mother. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Chapter §§ 513.6 through 513.6.4
- D-2 BMS Medicaid WV I/DD Waiver Program Notice, dated October 6, 2021
- D-3 Independent Psychological Evaluation (IPE), dated October 4, 2021
- D-4 █ Schools Individualized Education Program, dated February 25, 2021
- D-5 IPE, dated November 3, 2020

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) An application for medical eligibility for the Medicaid I/DD Waiver Program was submitted by the Appellant's representative.
- 2) On October 6, 2021, the Respondent issued a notice advising the Appellant was denied medical eligibility for the Medicaid I/DD Waiver Program because the documentation submitted did not support an eligible diagnosis or the presence of substantial adaptive deficits in three or more of the six major life areas identified for eligibility (Exhibit D-2).
- 3) When determining the Appellant's medical eligibility, the Respondent reviewed the October 4, 2021 IPE; February 25, 2021 [REDACTED] Schools IEP; and November 3 2020 Children with Disabilities Community Service Program (CDCSP) IPE submitted for review by the Appellant's representative (Exhibit D-2).
- 4) The Appellant does not have a diagnosis of Intellectual Disability (Exhibits D-2 through D-5).
- 5) The Appellant has a diagnosis of Autism, Level 2, and Borderline Intellectual Functioning (Exhibits D-2 through D-5).
- 6) The Appellant has substantial deficits in the areas of *self-care* and *receptive or expressive language* (Exhibits D-2 through D-5).

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 Wavier 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.

BMS Manual § 513.6.2 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.

DISCUSSION

The Respondent denied the Appellant medical eligibility for the Medicaid I/DD Waiver Program due to lacking an eligible diagnosis and substantial adaptive deficits in at least three major life areas. The Appellant's representative contested the Respondent's denial and argued that the Appellant has substantial limitations and should be eligible for the Medicaid I/DD Waiver Program.

Diagnosis

To be medically eligible for the Medicaid I/DD Waiver Program, the Appellant had to meet 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 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 a diagnosis of Intellectual Disability. The Appellant's representative argued that autism testing scores indicated a diagnosis of Autism, Level 3. While the testing scores did indicate scores in the Autism, Level 3 range, the psychologist that conducted the October 6, 2021 IPE determined that the Appellant has a diagnosis of Autism, Level 2. The policy requires the Respondent to rely on the IPE when determining the Appellant's medical eligibility for the Medicaid I/DD Waiver Program. The evidence verified that the IPE reflected the Appellant had a diagnosis of Autism, Level 2. There was no evidence submitted to verify that the Appellant had been diagnosed with Autism, Level 3.

Functionality

To be medically eligible for the Medicaid I/DD Waiver Program, the Appellant had to have substantial deficits in at least three of the six identified major life areas as evidenced by relevant test scores and narrative descriptions contained in the documentation submitted for review. The evidence verified that the Appellant had substantial deficits in the areas of *self-care* and *receptive or expressive language*.

To demonstrate substantial deficits, the Appellant's ABAS-3 scaled scores had to reflect scores of 1 or 2. The Respondent testified that ABAS-3 composite scores that support substantial deficits would be scores of 55 or below. Pursuant to the evidence, the Appellant did not have qualifying scores in any additional deficit areas. While the October 6, 2021 ABAS-3 reflected a scaled score of 1 in the area of *health and safety*, this subdomain falls within the deficit area of *capacity for independent living*. To establish a deficit in the area of *capacity for independent living*, the Appellant had to demonstrate substantial deficits in three subdomains.

The Appellant's representative argued the Appellant required prompting and supervision to ensure safety and complete daily living tasks. While the Appellant's limitations are acknowledged, no relevant test scores corroborated by narrative descriptions were entered as evidence to verify that

the Appellant had substantial deficits in additional major life areas.

CONCLUSIONS OF LAW

- 1) To be 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 had to have a diagnosis of 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) To meet the medical eligibility criteria in the category of functionality, the Appellant had to have substantial deficits in at least three of the six identified major life areas as evidenced by relevant test scores and narrative descriptions contained in the documentation submitted for review.
- 6) The preponderance of evidence established that the Appellant had substantial deficits in two of the six identified major life areas as evidenced by relevant test scores and narrative descriptions.
- 7) The Respondent correctly denied the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

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 14th day of December 2021.

Tara B. Thompson, MLS
State Hearing Officer