



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

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Jolynn Marra
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December 16, 2021

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

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2333

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 and Assessment

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

■■■■, A MINOR,

Appellant,

v.

ACTION NO.: 21-BOR-2333

**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 15, 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 September 8, 2021 decision to deny the Appellant medical eligibility for the Medicaid Intellectual and Developmental Disabilities Waiver (I/DDW) Program .

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation and Assessment. The Appellant appeared *pro se*, by ■■■■■■■■■■, her 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
- D-2 BMS Notice of Denial, dated September 8, 2021
- D-3 Independent Psychological Evaluation, dated August 30, 2021
- D-4 ■■■■■■■■■■ Medicine Records, dated June 18, 2021

Appellant's Exhibits:

- A-1 ■■■■ Physician's Letter, dated October 14, 2021

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 September 8, 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 corroborate the presence of an eligible diagnosis or the presence of substantial adaptive deficits in three or more of the six major life areas. Specifically, the Notice stated, "While the diagnosis of Intellectual Disability is issued today, it is not clear if this is substantiated as minimal additional documentation was received. Additionally, the diagnosis of Autistic Disorder is not measured to be severe based on the psychometric data received today" (Exhibit D-2).
- 3) When determining the Appellant's medical eligibility, the Respondent reviewed the August 30, 2021 IPE and June 18, 2021 [REDACTED] Telemedicine records submitted for review by the Appellant's representative (Exhibit D-2).
- 4) After the Respondent's September 8, 2021 notice was issued, the Appellant's representative submitted a letter from the Appellant's [REDACTED] physician (Exhibit A-1). The Respondent reviewed this letter before the hearing and determined the contents of the letter did not provide any additional qualifying diagnoses or relevant test scores to change the eligibility determination.
- 5) The Appellant has substantial adaptive deficits in the major life areas of *receptive or expressive language* and *capacity for independent living* (Exhibits D-2 and D-3).
- 6) On August 30, 2021, licensed psychologist [REDACTED] completed an IPE (Exhibit D-3).
- 7) Substantiating medical records were not available for review by the IPE psychologist (Exhibit D-3).
- 8) Developmental history obtained from the Appellant's mother indicated that the Appellant met her developmental milestones on-time (Exhibit D-3).
- 9) The Appellant is prescribed antipsychotic medication and has mental health diagnoses (Exhibits D-3 and D-4).
- 10) On August 30, 2021, the Appellant presented as cooperative, with impaired concentration, and impaired sustained attention. Specifically, the IPE states that the Appellant's "investment in the process seemed to be preempted by her wanting to leave," and noted she "seemed to fatigue rather quickly" (Exhibit D-3).
- 11) Wechsler Intelligence Scale for Children-Fifth Edition (WISC) results may be affected by participant distractibility (Exhibit D-3).

- 12) The Appellant's Full Scale IQ score reflected on the IPE was 58 (Exhibit D-3).
- 13) The Appellant's Wide Range Achievement Test-Fifth Edition (WRAT) scaled scores ranged from 71 to 95 (Exhibit D-3).
- 14) The Appellant's Gilliam Autism Rating Scale-Third Edition Autism Index Score was 99 (Exhibit D-3).
- 15) The IPE diagnostic impressions reflected diagnoses of Autistic Disorder and Mild Intellectual Disability (Exhibit D-3).
- 16) The IPE psychologist's relevant history and mental status narrative conflicted with [REDACTED] Telemedicine documentation that provided details of five months of clinical diagnostic impressions, observations of auditory hallucinations, and treatment for mental health disorders — including psychosis (Exhibits D-3 and D-4).

APPLICABLE POLICY

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

To be eligible for the I/DDW 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.

BMS Manual § 513.6.1.1 provides in part:

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, 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

The MECA determines the qualification for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) level of care based on the IPE that verifies that the applicant has an 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. For the I/DDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also by narrative descriptions contained in the documentation.

To be eligible to receive I/DDW 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 § 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. Any condition, other than mental illness, found to be closely related to intellectual disabilities may be eligible if the 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 § 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 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 standard 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.

DISCUSSION

The Respondent denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program because submitted documentation did not corroborate the diagnosis provided on the IPE or corroborate that the Appellant had substantial functioning limitations in three areas. The Appellant contested the Respondent's decision to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program. The Appellant argued that although test scores were not consistent with the diagnosis provided by the IPE psychologist, the diagnosis is accurate due to the Appellant's substantial functioning limitations.

Diagnosis

To prove that the Respondent correctly denied the Appellant medical eligibility for the Medicaid I/DD Waiver Program, the Respondent had to demonstrate by a preponderance of the evidence that the Appellant lacked an eligible diagnosis of intellectual disability or a related condition that is severe. The Respondent testified that to meet the severity level for Medicaid I/DD Waiver Program eligibility, the Appellant's diagnosis of Autism had to be qualified as Level 3.

The evidence verified that the Appellant has mental illness diagnoses for which she is prescribed medication. Pursuant to the policy, mental illness diagnoses cannot qualify an individual for Medicaid I/DD Waiver program medical eligibility. The policy does not exclude individuals with co-occurring mental illness and qualifying intellectual disability or severe related conditions from establishing medical eligibility for the Medicaid I/DD Waiver Program.

Intellectual Disability

The Respondent argued that the IPE WISC Full Scale IQ score of 58 and subsequent Intellectual Disability diagnosis reflected on the IPE were unreliable because the WRAT scores, mental status observations, and the Appellant's history of meeting her developmental milestones were consistent with individuals functioning with a Full Scale IQ score higher than 58. During the hearing, the Respondent testified individuals that require an ICF/IID level of care do not meet developmental milestones on time. The Respondent argued that no additional medical or school records were submitted for review to verify that a Full Scale IQ score of 58 and Intellectual Disability diagnosis were valid. The Respondent contended that without corroborating documentation the Respondent could not affirm the IPE diagnosis for medical eligibility for the Medicaid I/DD Waiver Program.

The October 14, 2021 letter written by the Appellant's pediatrician reported the IPE Full Scale IQ score of 58 and Intellectual Disability diagnosis. However, the letter did not present any corroborating evidence to verify an Intellectual Disability or Autism, Level 3 diagnosis. Further, the letter narrative reflected that the Appellant's "spelling isn't a great level," which conflicted with the Appellant's IPE WRAT spelling scaled score of 95. During the hearing, the Respondent testified that to be eligible for Medicaid I/DD Waiver Program eligibility, WRAT scores had to be 55 or below.

The evidence reflected that during the IPE, the Appellant presented with impaired concentration and sustained attention. The IPE narrative discussed that the scores of the WISC may be affected by participant distractibility. The evidence reflected that the IPE psychologist did not have substantiating records to review when conducting the IPE. Because the preponderance of evidence established that the Appellant's WISC scores may have been affected by her concentration and investment in the process and no additional evidence was entered to corroborate the validity of the WISC results, this Hearing Officer cannot affirm that the Appellant's WISC Full Scale IQ score of 58 is reliable.

Autism

The Respondent testified that the Autism Rating Score reflected on the IPE did not meet the threshold of a Level 3 severity. The evidence reflected that the Appellant was given a diagnosis of Autistic Disorder but did not provide any specified level. No additional evidence was submitted to establish that the Appellant had a qualifying diagnosis of Autism, Level 3.

The narrative of the IPE stipulated that the examiner did not have substantial medical records to review and that the Appellant's mother provided much of the historical report. The mental status and mental health history narrative provided by the assessing IPE psychologist conflicted with submitted documentation that provided a historical assessment of the Appellant's long-term clinical diagnostic impressions and treatment for mental health disorders. The IPE psychologist categorically rejected the diagnostic impressions of the Appellant's medical providers and proffered that the Appellant's symptoms of psychosis are related to autism spectrum disorder.

The preponderance of evidence failed to establish that the IPE psychologist gave full systemic consideration of the Appellant's medical history and psychometric data when assigning the Appellant's diagnosis. Because the information contained within the IPE conflicts with medical records provided to the Respondent for consideration, the reliability of the IPE psychologist's diagnosis cannot be affirmed.

ICF Level of Care Functioning

The policy specifies that the Appellant be diagnosed with an intellectual disability or a severe related condition with concurrent substantial deficits in at least three of the six identified major life areas. Substantial functioning deficits must be verified by standardized adaptive behavior test scores. During the hearing, the Respondent stipulated that the Appellant has substantial deficits in the functioning areas of *receptive or expressive language* and *capacity for independent living*. The preponderance of evidence verified that the Appellant lacked substantial deficits in additional functioning 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 diagnostic findings of the August 30, 2021 IPE were inconsistent with psychometric data and other medical records submitted for review.
- 5) The preponderance of evidence failed to establish that the Appellant has a reliable eligible diagnosis of Intellectual Disability or Autism, Level 3.
- 6) 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.
- 7) 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.
- 8) 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 ___ day of ___ 2021.

Tara B. Thompson, MLS
State Hearing Officer