



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
Raleigh County DHHR  
407 Neville Street  
Beckley, WV 25801

Jolynn Marra  
Interim Inspector General

December 10, 2021

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 21-BOR-2381

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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services  
PC&A

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

■■■■, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 21-BOR-2381**

**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 8, 2021, on an appeal filed November 15, 2021.

The matter before the Hearing Officer arises from the November 4, 2021, decision by the Respondent to deny medical eligibility for participation in the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by ■■■■■■■■■■ and Katie Janey, Adult Protective Service Workers. All witnesses were sworn in and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §513.6
- D-2 Notice of Denial dated November 4, 2021
- D-3 Independent Psychological Evaluation dated October 15, 2021
- D-4 Psychological Evaluation dated May 23, 2001
- D-5 Individualized Education Plan dated January 10, 2011

**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) The Appellant applied for services under the I/DD Waiver Program.
- 2) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on October 15, 2021, in conjunction with the I/DD Waiver Program application (Exhibit D-3).
- 3) The Appellant has a diagnosis of mild Intellectual Disability (Exhibit D-3).
- 4) The Appellant was found to have a substantial adaptive deficit in learning (Exhibits D-2 and D-3).
- 5) The Respondent issued a Notice of Denial on November 4, 2021, advising that the Appellant's application had been denied as the documentation submitted did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for I/DD Waiver eligibility (Exhibit D-2).

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §513.6.2 states that to be eligible to receive 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.

### **Diagnosis**

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, if severe and chronic in nature, may make an individual eligible for the I/DD Waiver 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 Disability 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 disability.

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 in Section 513.6.2.2.

### **Functionality**

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 75<sup>th</sup> percentile when derived from Intellectual Disability (ID) normative populations when ID 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.

### **Active Treatment**

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic training, treatment, health services, and related services. Active treatment does not include

services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

## **DISCUSSION**

Pursuant to policy, an individual must meet the medical eligibility criteria of a diagnosis of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22, the functionality criteria of at least three (3) substantial adaptive deficits out of the six (6) major life areas that manifested prior to age 22, the need for active treatment and a requirement of ICF/IID level of care to receive services under the I/DD Waiver Program.

The Appellant met the diagnostic criteria with an eligible diagnosis of mild Intellectual Disability. The Respondent denied the Appellant's application because he did not meet the functionality criteria by demonstrating at least three substantial adaptive deficits in the six major life areas.

The Respondent's witness, Kerri Linton, testified that based upon the scores derived from the Wide Range Achievement Test that was administered during the psychological evaluation in October 2021, the Appellant was found to have a substantial adaptive deficit in Learning. The Appellant was also found to have a substantial deficit in Social under the major life area of Capacity for Independent Living. However, at least three (3) subdomain categories must be substantially delayed for a deficit to be awarded in Capacity for Independent Living.

Ms. Linton reviewed the test scores from the Adaptive Behavior Assessment Scale (ABAS) administered in October 2021 that measured the Appellant's adaptive behaviors relating to the major life areas. The Appellant received an eligible of score of less than one percentile, or a scaled score of 1 or 2, in the subdomain of Social. The Appellant did not receive eligible scores in Communication (Receptive/Expressive Language), Self-Care, Self-Direction or in the subdomains for Capacity of Independent Living of Community Use, Home Living, Health and Safety and Leisure. There were no reported issues with the Appellant's ambulation, therefore a deficit was not given for Mobility.

Katie Janey, representative for the Appellant, testified that the Appellant has resided in an assisted living facility since he was eighteen years old and has never lived independently. Ms. Janey did not agree with the scores the Appellant received, contending that the Appellant's functional abilities were not accurately portrayed.

Policy measures a substantial adaptive deficit by a standardized test score of three standard deviations below the mean, or average, of less than one percentile when compared to scores derived from a normative population. Eligible test scores must be present before a substantial adaptive deficit can be identified and awarded to an applicant. The preponderance of the evidence failed to support the presence of additional substantial adaptive deficits for the Appellant as defined by policy.

Whereas the documentation submitted failed to support the presence of at least two additional substantial adaptive deficits as defined by policy, the Appellant does not meet the medical eligibility criteria for services under the I/DD Waiver Program.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that the diagnostic, functionality, need for active treatment criteria and the need for ICF/IID level of care must be met to establish medical eligibility for the I/DD Waiver Program.
- 2) The Appellant met the diagnostic criteria with an eligible diagnosis of a mild Intellectual Disability.
- 3) To meet the functionality criteria, an individual must demonstrate the presence of at least three substantial adaptive deficits in the six major life areas.
- 4) The documentation submitted identified the presence of a deficit in Learning and a deficit in one subdomain category under Capacity for Independent Living.
- 5) The Appellant did not meet the functionality criteria of at least three substantial adaptive deficits in the major life areas.
- 6) The Appellant does meet the medical eligibility criteria for services under the I/DD Waiver Program.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Respondent's denial of the Appellant's application for services under the I/DD Waiver Program.

**ENTERED this 10<sup>th</sup> day of December 2021.**

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**Kristi Logan  
Certified State Hearing Officer**