



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

March 24, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED PERSON v. WVDHHR
ACTION NO.: 22-BOR-1073

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Gary Michels, Esq., Office of Attorney General
Sarah Clendenin, PC&A
Kerri Linton, PC&A

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

██████████, A PROTECTED PERSON

Appellant,

v.

Action Number: 22-BOR-1073

**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 Person. 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 March 16, 2022, on an appeal filed January 14, 2022.

The matter before the Hearing Officer arises from the October 19, 2021 decision by the Respondent to deny the Appellant's application for ICF/IID facility placement.

At the hearing, the Respondent was represented by Gary Michels, Esq., Office of Attorney General. Appearing as a witness for the Respondent was Rick Workman, Licensed Psychologist, Psychological Consultation & Assessment. The Appellant was represented by ██████████, Disability Rights of West Virginia. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision dated October 19, 2021
- D-2 ICF/MR Level of Care Evaluation dated September 9, 2021
- D-3 Psychological Evaluation performed by ██████████ Ed.D., dated September 10, 2021
- D-4 Social Assessment/Personal Profile dated September 8, 2021
- D-5 Psychological Assessment performed by ██████████ School Psychologist, dated March 9, 1998

D-6 Letter from [REDACTED] Mental Healthcare, PLLC, dated January 10, 2013

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) On October 19, 2021, the Appellant, currently age 35, was notified that his application for placement in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) was denied because his condition does not meet required diagnostic criteria for the program (Exhibit D-1).
- 2) Documentation submitted for review did not support the presence of substantial delays prior to age 22 and indicated that the Appellant's delays are primarily related to mental health issues rather than intellectual disabilities and/or a related condition (Exhibit D-1).
- 3) The Appellant was residing in a state psychiatric hospital when his ICF/MR Level of Care Evaluation (DD-2A) was completed on September 9, 2021 (Exhibit D-2).
- 4) The ICF/MR Level of Care Evaluation lists Axis I diagnoses of Post-Traumatic Stress Disorder and Anxiety Disorder. Axis II diagnoses include Intellectual Disability and Autism Spectrum Disorder (Exhibit D-2).
- 5) The Appellant is ambulatory, has normal speech and is independent in self-care (Exhibit D-2).
- 6) The Appellant was diagnosed with Mild Intellectual Disability, Autism Spectrum Disorder and Generalized Anxiety Disorder during a Psychological Evaluation completed on September 10, 2021 (Exhibit D-3).
- 7) At the time of the Psychological Evaluation, the Appellant had been committed to a psychiatric hospital by court order after he was charged with assaulting his mother (Exhibit D-3).
- 8) The Appellant graduated from [REDACTED] High School in 2004 (Exhibit D-3).
- 9) The Appellant worked at a grocery store for a brief time while in school (Exhibit D-3).
- 10) The Appellant held a driver's license for a period, but it was not renewed due to safety concerns (Exhibit D-3).
- 11) The Appellant has preferred activities such as arts and crafts, watching movies and listening to music (indicative of self-direction) (Exhibit D-3).

- 12) The Appellant spoke with clear articulation during his Psychological Evaluation, conversed in full sentences and answered questions meaningfully (Exhibit D-3).
- 13) The Appellant attained a full-scale IQ score of 67 (percentile rank 1) on the Weschler Adult Intelligence Scale-4th Edition (WAIS-IV) (Exhibit D-3).
- 14) The Appellant achieved scores of 69 in math (percentile rank 2), 91 in spelling (percentile rank 27) and 79 in word reading (percentile rank 8) on the Wide Range Achievement Test-5th Edition (WRAT-5) (Exhibit D-3).
- 15) A Social Assessment/Personal Profile (DD-4) was completed for the Appellant on September 8, 2021 (Exhibit D-4).
- 16) The assessment revealed that the Appellant was treated for Bipolar Disorder, Attention Deficit/Hyperactivity Disorder (AD/HD) and Obsessive-Compulsive Disorder (OCD) at age six (Exhibit D-4).
- 17) The Appellant was diagnosed with Autism in second grade (Exhibit D-4).
- 18) The Appellant began to see a psychiatrist at age 16 and had various psychiatric facility admissions throughout high school (Exhibit D-4).
- 19) The Appellant resided in housing for the mentally impaired for three or four years, but was sent home after he became disruptive (Exhibit D-4).
- 20) A Psychological Assessment was prepared for ██████████ Schools on March 9, 1998, when the Appellant was 11 years old. At that time, the Appellant was using sixth grade-level materials in all subjects except mathematics (Exhibit D-5).
- 21) The Appellant's behavior problems became pronounced in second grade following the death of his grandfather. He exhibited destructive rages and out-of-control behavior (Exhibit D-5).
- 22) Diagnoses on the school assessment included High-Functioning Autism, OCD, AD/HD, Tourette's Syndrome, and possible Asperger's Syndrome (Exhibit D-5).
- 23) The Appellant attained a full-scale IQ score of 76 (borderline range of intelligence) during the school psychological evaluation (Exhibit D-5).
- 24) The Appellant was treated by ██████████, M.D., for 16 years beginning at age nine when he was admitted to the ██████████ Hospital for chronic aggression (Exhibit D-6).
- 25) During his admission, the Appellant was diagnosed with High-Functioning Autism, Bipolar Disorder, OCD, Tourette's Syndrome and Borderline IQ (Exhibit D-6).

26) The Appellant had numerous childhood hospital admissions secondary to aggression (Exhibit D-6).

APPLICABLE POLICY

West Virginia Medicaid Regulations, Chapter 511.2.3 state:

The Bureau for Medical Services, through the ICF/IID contracted agent, determines the medical eligibility for an applicant in the ICF/IID Program. To be eligible for ICF/IID placement, the applicant must meet the following criteria:

1. 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.
 - a. Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the ICF/IID 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 persons with an intellectual disability, and requires services similar to those required for persons with an intellectual disability.
 - b. Additionally, the applicant who has the 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 below.
2. The applicant must have substantial adaptive deficits in three or more of the following six major life areas:
 - Self-care,
 - Receptive and/or expressive language,
 - Learning (functional academics),
 - Mobility,

- Self-direction,
- Capacity for Independent Living, which includes the following six subdomains: home living, social skills, employment, health and safety, community use, and leisure activities.
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For the capacity for independent living major life area to be met, the applicant must be substantially delayed in at least three of the six sub-domains (home living, social skills, employment, health and safety, community use and leisure activities).

Substantial adaptive deficit is defined as scores on standardized measures of adaptive behavior that are three standard deviations below the mean or less than one percentile when derived from non-ID normative populations, or in the average range or below the 75th percentile when derived from ID normative populations.

The presence of substantial deficits must be supported by the additional documentation submitted for review (e.g., Individual Education Program (IEP), Occupational Therapy (OT) evaluations, narrative descriptions, etc.)

Substantial deficits must be documented through both the narrative documents and the standardized measures of adaptive behavior.

3. The applicant must have a need for an ICF/IID level of care that:
 - Is certified by a physician (DD-2A) and,
 - Is documented as being required by the licensed psychologist (DD-3) and,
 - Is recommended by a licensed social worker (DD-4).
4. The applicant must require and would benefit from active treatment.
 - Evaluations of the applicant must demonstrate a need for intensive instruction, services, assistance, and supervision in order to learn new skills and increase independence in activities of daily living.

DISCUSSION

To establish medical eligibility for ICF/IID facility placement, an individual must meet the diagnostic, functionality and need for active treatment criteria.

Rick Workman, the Licensed Psychologist who reviewed the Appellant's application, testified about the documentation, and stated that mental illness is specifically excluded as a related condition for ICF/IID eligibility.

Mr. Workman reviewed the Appellant's test scores on the WAIS-IV and stated that, while the Appellant exhibited a potentially eligible score in regard to Intellectual Disability, the score does not appear compatible with other information submitted. The Appellant's WRAT-5 scores reveal that he has functional academics, although he exhibits difficulties with mathematics. While the Appellant had some potentially eligible ABAS-III scores concerning functional deficits, the scores were not compatible with other normative descriptions and narratives.

Mr. Workman pointed out that individuals who have the level of intellectual deficit required for ICF/IID placement would not normally be able to obtain a driver's license or drive a vehicle.

Mr. Workman testified that the Appellant was admitted to [REDACTED] Hospital by the Circuit Court of [REDACTED] after he was found not guilty of assault based on mental illness.

Mr. Workman testified that the Appellant's 1998 school psychological assessment (completed when the Appellant was 11 years old) lists diagnoses of High-Functioning Autism, OCD, AD/HD, Tourette's Syndrome and possible Asperger's Syndrome. The Appellant was using sixth-grade materials in all subjects except math at the time of the evaluation. The evaluation summary indicates that the Appellant was functioning in the low average range in regard to verbal comprehension/language abilities and in the mildly mentally impaired range in regard to perceptual organization/nonverbal reasoning abilities, which does not support the presence of severe Autism or a severe Intellectual Disability. Mr. Workman testified that since the Appellant was not diagnosed with Autism earlier in his development, it appears that his level of Autism is not severe.

Mr. Workman testified that the January 10, 2013 letter from [REDACTED] does not contain a diagnosis of a severe Intellectual Disability. He indicated that individuals in an ICF/IID facility are taught basic skills and require intensive services. Some of the individuals are immobile or unable to communicate. Mr. Workman surmised that, if placed in such a facility, the Appellant could possibly be a danger to other residents.

The Appellant's attorney stated that the Appellant had modified classwork while in school and was assigned an aide almost exclusively.

Information provided during the hearing reveals that the Appellant has a history of mental illness and documentation does not support the presence of an eligible diagnosis of severe Intellectual Disability or a related condition that manifested prior to age 22.

CONCLUSIONS OF LAW

- 1) To establish medical eligibility for ICF/IID facility placement, an applicant must meet the diagnostic, functionality and need for active treatment criteria.
- 2) Policy states that mental illness is specifically excluded as an eligible diagnosis for ICF/IID placement.

- 3) Historical documentation submitted for review demonstrates that the Appellant has a history of mental illness.
- 4) Documentation does not support the presence of a severe Intellectual Disability or the presence of a severe related condition that manifested prior to age 22.
- 5) As the Appellant does not meet diagnostic criteria, the Respondent acted correctly in denying his application for ICF/IID facility placement.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's action to deny the Appellant's application for ICF/IID facility placement.

ENTERED this 24th Day of March 2022.

**Pamela L. Hinzman
State Hearing Officer**