



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
304-822-6900

Jolynn Marra
Inspector General

May 17, 2022

[REDACTED]

RE: [REDACTED], a PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 22-BOR-1480

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Charlie Bowen, PC&A, Stacey Broce, BMS, Janice Brown, KEPRO

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

█, a **PROTECTED INDIVIDUAL**,

Appellant,

v.

Action Number: 22-BOR-1480

**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 May 12, 2022, on appeal filed April 5, 2022.

The matter before the Hearing Officer arises from the February 21, 2022 decision by the Respondent to deny the Appellant's eligibility under the I/DD Waiver program.

At the hearing, the Respondent appeared by Charlie Bowen, a consulting Psychologist for the Bureau of Medical Services. The Appellant appeared by his guardian through the West Virginia Department of Health and Resources, █. Appearing as a witness was █, Adult and Child Welfare Supervisor, West Virginia Department of Health and Human Resources.

All witnesses were sworn 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 Decision dated February 21, 2022
- D-3 Independent Psychological Evaluation dated February 8, 2022
- D-4 Psychological Evaluation dated January 21, 2022
- D-5 Psychological Evaluation dated July 20, 2021
- D-6 Individualized Education Program dated November 18, 2021

Appellant's Exhibits:

- A-1a Information from [REDACTED] dated February 27, 2016
- A-1b Evaluation from [REDACTED] dated December 17, 2014
- A-1c Information from [REDACTED]

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) The Appellant was a 17-year-old minor at the time of the application.
- 3) An Independent Psychological Evaluation (IPE) was conducted with the Appellant on February 8, 2022, as part of the I/DD Waiver Program application. (Exhibit D-3)
- 4) The Appellant was diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), Major Depressive Disorder with Anxious Distress, and Borderline Intellectual Functioning. (Exhibit D-3)
- 5) The Appellant's application included a January 21, 2002, psychological evaluation which diagnosed the Appellant with Intermittent Explosive Disorder, Major Depressive Disorder, Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder, and Borderline Intellectual Functioning. (Exhibit D-4)
- 6) The Appellant's application included a July 20, 2021, psychological evaluation which diagnosed the Appellant with Intermittent Explosive Disorder, Major Depressive Disorder, Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder, and Borderline Intellectual Functioning. (Exhibit D-5)
- 7) The Appellant did not meet the diagnostic criteria for I/DD Waiver Program eligibility.
- 8) At the age of 10 years, the Appellant was diagnosed with Asperger's Disorder.
- 9) Asperger's Disorder is not considered a related condition of I/DD Waiver Program eligibility.
- 10) On February 21, 2022, the Respondent issued a Notice of Denial which advised that the Appellant's application for I/DD Waiver services had been denied as the documentation submitted for review did not support the presence of an eligible diagnosis for the I/DD

Waiver program of intellectual disability or a related condition, which is severe. (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 75th 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

Policy governs that to be eligible for the I/DD Waiver Program, an individual must meet the medical eligibility criteria of a diagnosis, functionality, the need for active treatment, and the requirement of ICF/IDD level of care. The psychological reports submitted for review did not meet the diagnostic eligibility criteria, resulting in a denial of the Appellant's eligibility. To meet eligibility for this criterion, the Appellant must have a diagnosis of an intellectual disability or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet the established diagnostic criteria.

Charlie Bowen, the Respondent's representative, testified that the information (Exhibit D-1 through D-6) submitted with the Appellant's application failed to document an eligible diagnosis. The Appellant's most recent IPE (Exhibit D-3) provided a diagnosis of ADHD, Major Depressive Disorder, and Borderline Intellectual Functioning. The Wechsler Adult Intelligence Scale administered to the Appellant measured his full-scale Intelligence Quotient (IQ) as 71, which is in the borderline range of intellectual functioning and did not constitute an Intellectual Disability. The Respondent provided additional information from the Appellant's Individualized Education Program (Exhibit D-6) which did not support any eligible diagnoses.

The Appellant's guardian contends that the Appellant was previously diagnosed with autism spectrum disorder. The Appellant's psychological evaluation from 2014 (Exhibit A-1b) revealed that the Appellant was diagnosed with Asperger's Disorder, ADHD, ODD and Pica at the age of 10. The prior evaluation indicated the Appellant's full-scale IQ of 70 with a diagnosis of Borderline Intellectual Functioning. Mr. Bowen testified that the Appellant's previous diagnosis of Asperger's Disorder was excluded from program eligibility as it was not considered severe. Additionally, the Appellant's current evaluations failed to indicate his previous diagnosis of Asperger's Disorder or any condition related to autism.

The Respondent showed by a preponderance of evidence that the submitted documentation failed to demonstrate that the Appellant met the diagnostic criteria for medical eligibility under the I/DD Waiver Program. Therefore, the Respondent's decision to deny the Appellant's application for I/DD Waiver Program benefits is affirmed.

CONCLUSIONS OF LAW

- 1) An individual must meet diagnostic criteria of a diagnosis of an intellectual disability or a related condition, which constitutes a severe and chronic disability that manifested prior to age 22.
- 2) The Appellant did not have a diagnosis of an intellectual disability or a related condition which is considered severe.
- 3) The Appellant did not meet the diagnostic 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 _____ day of May, 2022.

Eric L. Phillips
State Hearing Officer