



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
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Jolynn Marra  
Inspector General

June 15, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1661

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: Kerri Linton, PC&A

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 22-BOR-1661**

**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 June 9, 2022, on an appeal from April 29, 2022.

The matter before the Hearing Officer arises from the April 18, 2022 decision by the Respondent to deny the Appellant's application for I/DD Waiver Services.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant appeared by his mother and guardian, █. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau of Medical Services Provider Manual § 513
- D-2 Notice of Decision dated April 18, 2022
- D-3 Independent Psychological Evaluation dated April 4, 2022
- D-4 Independent Psychological Evaluation dated March 1, 2022
- D-5 Notice of Decision dated March 8, 2022
- D-6 Weschler Intelligence Scale for Children dated March 1, 2022
- D-7 Individualized Education Program-█ dated April 7, 2021
- D-8 Interdisciplinary Team Report dated November 12, 2015
- D-9 Developmental Profile 3(DP-3) dated February 10, 2017
- D-10 Individualized Education Program-█ dated March 22, 2022
- D-11 Incident Summary dated January 21, 2022

- D-12 Letter of Disciplinary Action dated February 1, 2022
- D-13 Incident Summary dated February 11, 2022
- D-14 Medical Records- [REDACTED] dated December 22, 2016
- D-15 Medical Records- [REDACTED] dated March 1, 2022
- D-16 Psychoeducational Evaluation dated March 14, 2022

**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) The Appellant was an 8-year-old minor at the time of application.
- 3) On March 1, 2022, an Independent Psychological Evaluation (IPE) was conducted with the Appellant as part of the application process. (Exhibit D-4)
- 4) The Appellant was diagnosed with Autism Spectrum Disorder, Level 2. (Exhibit D-4)
- 5) On March 8, 2022, the Respondent issued a Notice of Denial which advised the Appellant that his application for I/DD Waiver services had been denied due to “the documentation submitted for review did not support the presence of an eligible diagnosis of either Intellectual Disability or a severe related condition”. (Exhibit D-5) Additionally, the notice provided the Appellant’s guardian the opportunity to complete a second psychological evaluation within sixty days.
- 6) A second IPE was completed with the Appellant on April 4, 2022. (Exhibit D-3)
- 7) The additional evaluation diagnosed the Appellant with Autism Spectrum Disorder, Level 2. (Exhibit D-3)
- 8) On April 18, 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 of either Intellectual Disability or a sever related condition and that the documentation did not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for 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**

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. Based on the information submitted for review, the Appellant did not meet the eligibility criteria in the diagnostic and functionality areas. To be determined eligible in those areas an individual 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 and have substantial deficits in at least three of the six identified major life areas. The Respondent had to prove by a preponderance of the evidence that the documentation submitted failed to meet eligibility standards in the diagnostic and functionality criteria.

The Appellant presented a diagnosis of Autism Spectrum Disorder, Level 2, on multiple Independent Psychological Evaluations (Exhibit D-3 and D-4). Ms. Kerri Linton, Respondent's witness, testified that the Appellant's diagnosis, coupled with his cognitive abilities documented in the assessment, did not demonstrate a severe related condition. As part of the second IPE (Exhibit D-3), the Appellant was administered a Slosson Intelligence Test (SIT-4) and achieved a

total standard score of 133 which equated to a very superior range of intellectual functioning. Ms. Linton testified that individuals who would be approved under the diagnostic criteria with an intellectual disability would achieve scores of 69 or below and those individuals with a severe intellectual disability with substantial adaptive deficits would achieve scores of 55 or below. Additionally, the Appellant achieved a score of 122 on the Wechsler Intelligence Scale for Children which suggested a very superior range of cognitive functioning. The Adaptive Behavior Assessment System was administered to determine the Appellant's adaptive behaviors related to the major life areas. Ms. Linton testified that eligible scores are determined to be less than one percentile or a scaled score of one or two. Based on the administered test, the Appellant failed to achieve an eligible score in any of the assessed domains. The initial IPE (Exhibit D-4) administered a Weschler Abbreviated Scale of Intelligence in which the Appellant achieved a full scale of 140 within the very high range of intelligence. The administered Adaptive Behavior Assessment System on the IPE resulted in eligible scores of self-direction, self-care, leisure, social and health and safety.

██████████, the Appellant's mother, testified her son was previously eligible for waiver services in the State of ██████████ and understood the different eligibility guidelines between the jurisdictions. ██████████ testified that during the last several weeks of school, her son was moved from general education to a self-contained classroom. ██████████ acknowledged that her son has behavior issues, but no developmental or intellectual issues, citing he has been restrained approximately fifty times since the development of his Individualized Education Program (Exhibit D-10).

While the Appellant presents a diagnosis of Autism Spectrum Disorder, Level 2, the IPE did not support that his condition met the severity criteria under the diagnostic guidelines. Because the Appellant failed to meet the diagnostic criteria to qualify for services under the I/DD Waiver program, the Respondent's denial of the Appellant's application 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 June 2022.**

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Eric L. Phillips  
**State Hearing Officer**