



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

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Board of Review
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Jolynn Marra
Inspector General

July 27, 2022

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

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 22-BOR-1764

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 PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 22-BOR-1764

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on July 20, 2022 on an appeal filed with the Board of Review on June 22, 2022.

The matter before the Hearing Officer arises from the Respondent's May 23, 2022 decision to deny the Appellant medical eligibility for the Intellectual/Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation and Assessment. The Appellant appeared *pro se* by ■■■■■■■■■■, his guardian. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual §§ 513.6 through 513.6.4
- D-2 BMS Notice, dated May 23, 2022
- D-3 Independent Psychological Evaluation (IPE), dated May 16, 2022
- D-4 Psychiatric Evaluation, dated August 26, 2002
- D-5 Psychiatric Evaluation, dated May 7, 2007
- D-6 Psychiatric Evaluation, dated June 18, 2007
- D-7 Psychological Evaluation Review, dated September 14, 2018
- D-8 Order of Appointment, entered April 30, 2012
- D-9 IPE, dated June 15, 2018
- D-10 BMS Notice, dated July 31, 2018

- D-11 Addendum, dated June 15, 2020
- D-12 IPE, dated April 29, 2020
- D-13 BMS Notice, dated June 17, 2020

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) An application for Medicaid I/DD Waiver Program eligibility was submitted on the Appellant's behalf.
- 2) On May 23, 2022, the Respondent issued a notice advising the Appellant that he was ineligible for the Medicaid I/DD Waiver Program because the documentation did not reflect an eligible diagnosis with concurrent adaptive deficits during the developmental period (Exhibit D-2).
- 3) The May 23, 2022 denial stated, "Further, policy specifically excludes Mental Illness as a potentially eligible diagnosis" (Exhibit D-2).
- 4) At the time of the May 23, 2022 eligibility denial, the Appellant was 31 years old (Exhibits D-3, through D-9, and D-12).
- 5) The Appellant was not diagnosed with Intellectual/Developmental Disability during the developmental period (Exhibits D-3 through D-7, D-9, and D-12).
- 6) At age eleven, the Appellant was diagnosed with Pervasive Developmental Disorder; Attention-Deficit/Hyperactivity Disorder (ADHD), combined type; Psychosis, Not Otherwise Specified (NOS), and Anxiety Disorder, NOS (Exhibit D-4).
- 7) At age sixteen, the Appellant was diagnosed with ADHD; Oppositional Defiant Disorder; Autism; and Psychosis, NOS (Exhibits D-5 and D-6).
- 8) At age twenty-seven, the Appellant was diagnosed with Autism Spectrum Disorder, level 3; Bipolar II Disorder, Depression; Unspecified Disruptive Impulse-Control, and Conduct Disorder, severe; ADHD; and Unspecified Anxiety Disorder, moderate-severe (Exhibits D-7 and D-9)
- 9) At age 29, the Appellant was diagnosed with Autism, level 2 and Borderline Intellectual Functioning (Exhibit D-12).

- 10) At age 31, the Appellant was diagnosed with Autism Spectrum Disorder, level 3; and Specific Learning Disorder with impairment in mathematics (Exhibit D-3).
- 11) The Appellant is legally blind (Exhibit D-3).
- 12) The Appellant has received treatment for mental illness since age eleven (Exhibits D-3 through D-9, and D-12).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §§ 513.6 and 513.6.2.1 provide in pertinent parts:

To be eligible for the Medicaid I/DD Waiver Program, the applicant must meet medical eligibility. The applicant must have a written determination that they meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychologist Evaluation (IPE); which may include: background information, mental status examination, a measure of intelligence, adaptive behavior, achievement and any other documentation deemed appropriate.

To be medically eligible, the applicant must require the level of care and services provided in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) as evidenced by required evaluations and other information requested by the Independent Psychologist or the MECA and corroborated by narrative descriptions of functioning and reported history.

The MECA determines the qualification for an ICF/IID level of care based on the IPE that verifies that the applicant has a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. Mental illness is specifically precluded as an eligible related diagnosis.

For the I/DD Waiver Program individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

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

DISCUSSION

The Respondent denied the Appellant's medical eligibility for the Medicaid I/DD Waiver Program because the documentation provided failed to verify the Appellant had an eligible diagnosis manifested before age 22. The Appellant's representative testified that the Appellant has functioning deficits related to his Autism diagnosis and that the Autism diagnosis established during the developmental period should qualify him for the Medicaid I/DD Waiver Program.

The Respondent is required to determine the Appellant's eligibility for the Medicaid I/DD Waiver program through a review of an IPE and other documentation deemed appropriate. The Respondent does not have the authority to change the information submitted for review and can only determine if the information provided aligns with the policy criteria for establishing Medicaid I/DD Waiver eligibility. The Board of Review cannot judge the policy and can only determine if the Respondent followed the policy when deciding the Appellant's Medicaid I/DD Waiver eligibility. Further, the Board of Review cannot make clinical determinations regarding the Appellant's diagnosis and severity and can only decide if the Respondent correctly determined the Appellant's eligibility based on the diagnosis and severity reflected in the submitted documentation.

To be eligible for the Medicaid I/DD Waiver Program, the Appellant had to have a severe and chronic disability attributable to a condition, other than mental illness, that resulted in an impairment of general intellectual functioning or adaptive behavior similar to those individuals with an I/DD diagnosis. The related condition had to manifest before age 22, be likely to continue indefinitely, and result in substantial functioning limitations in three or more areas of major life activity. To prove that the Respondent correctly denied the Appellant's eligibility for the Medicaid I/DD Waiver Program, the preponderance of evidence had to demonstrate that the Appellant did not have a diagnosis of a related condition which constituted a severe and chronic disability with concurrent substantial adaptive deficits manifested before age 22. The evidence revealed the Appellant was diagnosed with Autism Spectrum Disorder, level 3, after the developmental period.

Autism is a potentially eligible related diagnosis. The evidence reflected that the Appellant received a diagnosis of Autism during the developmental period. The Respondent testified that at the time Appellant received the diagnosis of Pervasive Developmental Delay (PDD), clinicians assigned that diagnosis for individuals who do not meet the full criteria to be diagnosed with Autism. Therefore, the Respondent argued that the PDD diagnosis failed to meet the criteria to establish a diagnosis of a severe related condition.

The evidence reflected the Appellant was diagnosed with Autism during the developmental period. However, no diagnostic measures were included to verify that the Appellant presented with a severe related condition during the developmental period. The Appellant's representative argued that at the time the Appellant's Autism diagnosis was given, severity was not assessed and there was no way to know what the Appellant's Autism diagnosis severity was at that time. The Respondent testified that means to assess Autism severity existed during the Appellant's developmental period but no documentation was submitted to establish the Appellant's Autism diagnosis as a severe related condition. The Appellant's representative did not contest the Respondent's testimony that means to assess Autism severity existed, only that the Appellant's

Autism severity was not assessed. The Respondent must consider the information contained within the IPE and submitted documentation, and cannot consider information that is not reflected within the submitted record of the Appellant's developmental period.

The evidence revealed that the Appellant's mental health diagnoses and treatment pre-dated the onset of his Autism diagnosis. Pursuant to the evidence, the Appellant has an extensive history of receiving mental health treatment. Although the evidence verified the Appellant has functioning deficits, the evidence presented was not sufficient to establish that the Appellant's functioning deficits were primarily attributable to his Autism diagnosis. Therefore, the Hearing Officer could not affirm that the Appellant has a severe and chronic disability attributable to Autism, not mental illness. Severe and chronic disabilities attributed to mental illness are precluded from Medicaid I/DD Waiver eligibility.

CONCLUSIONS OF LAW

- 1) To be eligible for the Medicaid I/DD Waiver Program, the Appellant's related condition had to constitute a severe and chronic disability with concurrent substantial deficits manifested before age 22.
- 2) The preponderance of evidence failed to verify that the Appellant's diagnosis of Autism Spectrum Disorder constituted a severe and chronic disability with concurrent substantial deficits manifested before age 22.
- 3) 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 27th day of July 2022..

Tara B. Thompson, MLS
State Hearing Officer