



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

September 8, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1858

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: BMS/KEPRO/PC&A

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1858

**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 ██████████. 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 September 7, 2022, on an appeal filed July 14, 2022.

The matter before the Hearing Officer arises from the June 7, 2022 decision by the Respondent to deny the Appellant's application for the I/DD Waiver Services program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau of Medical Services. The Appellant appeared pro se. Appearing as a witness was ██████████. 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 June 7, 2022
- D-3 Independent Psychological Evaluation dated April 13, 2022
- D-4 Clinal Information from ██████████ *undated*
- D-5 Individual Service Plan dated September 15, 2020 and September 13, 2019
- D-6 Adult Diagnostic Assessment dated July 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 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) On April 13, 2022, an Independent Psychological Evaluation (IPE), a requirement of the application process, was conducted with the Appellant. (Exhibit D-3)
- 3) The Appellant was diagnosed with Schizoaffective Disorder, Bipolar Type and Borderline Intellectual Functioning. (Exhibit D-3)
- 4) On June 7, 2022, the Respondent issued a Notice of Denial which advised the Appellant that her application for I/DD Waiver services had been denied due to the “documentation provided for review does not indicate an eligible diagnosis of either Intellectual Disability or a Related Condition which is severe. Further, Mental Illness is specifically excluded as a potential eligible diagnosis per policy.” Additionally, the notice documented that the documentation failed to support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. (Exhibit D-2)
- 5) The Notice of Denial provided the Appellant the opportunity to complete a second psychological evaluation within sixty days of the application denial. (Exhibit D-2)
- 6) The Appellant exercised her right to a second psychological evaluation on June 12, 2022.
- 7) On July 14, 2022, the Board of Review dismissed the Appellant’s appeal without prejudice and remanded the issue to the Respondent for consideration of the second medical opinion.
- 8) On August 5, 2022, the Appellant vacated her request for a second medical opinion, reinstating her initial appeal.

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

To be determined 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/IID level of care. The information and evaluations submitted on behalf of the Appellant failed to establish eligibility in the diagnostic and functionality areas. Eligibility in those areas is determined when an individual presents 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 eligibility standards in the diagnostic and functionality criteria.

The IPE and additional documentation submitted on behalf of the Appellant identified her primary diagnosis as schizoaffective disorder, a mental illness, which is excluded from eligibility consideration. Ms. Kerri Linton, Respondent's witness reviewed the IPE and indicated that the assessments and narrative descriptions failed to identify an additional diagnosis to establish the Appellant's eligibility under the diagnostic criteria. Ms. Linton reported that the Appellant's full-scale intelligence quotient (IQ) of 76 on the administered Wechsler Adult Intelligence Scale (WAIS IV) was considered in the borderline range and did not support an Intellectual Disability for program eligibility.

The IPE failed to establish functional deficits in three of the six major life areas as it relates to the functionality criteria. The narrative descriptions outlined in the IPE identified that the Appellant lives independently with no reported deficiencies in the life areas of self-care, language, mobility, self-direction. To assess the Appellant's adaptive behaviors, an Adaptive Behavior Assessment System Adult (ABAS III) test was administered in conjunction with the IPE. Testimony indicated that scaled scores of 1 or 2 are considered eligible, and deficits in the life areas are awarded when the narrative documentation in the IPE support the evaluated scores. The Appellant achieved

eligible scores in subcomponents of the life area of Capacity for Independent Living, but narrative descriptions which identified the Appellant as living independently, failed to support the scores and no deficits were awarded.

The Appellant rebuked the validity of the IPE citing that the attending psychologist made numerous errors in documentation. The Appellant contended that the evidence lists her mother as a participant in the evaluation when her mother is deceased. Upon questioning by the Hearing Examiner, the Appellant indicated that her Home Health Aide was present but did not participate in the assessment. The Appellant proffered testimony indicating that she suffers from a traumatic brain injury and utilizes a walker and wheelchair to assist in her ambulation but did not offer any contention to the diagnostic criteria. The Appellant questioned the purpose of the program and became agitated with the hearing process, exiting the proceeding prior to its conclusion.

The Respondent's Notice of Decision (Exhibit D-2) afforded the Appellant the opportunity for a second medical opinion. The Appellant exercised that right but later vacated the request citing a lack of transportation which prevented her participation in the secondary medical examination. Because the Appellant vacated her right to a second medical opinion, this proceeding shall be based on the documentation submitted with the initial application.

The evidence is clear that the Appellant's diagnosis of schizoaffective disorder, a mental illness, is not considered a severe and chronic disability for program eligibility purposes. Because the Appellant failed to meet the diagnostic criteria of a diagnosis of an Intellectual Disability or a related condition which is severe, she does not meet the diagnostic criteria for eligibility under the program. Additionally, the Appellant failed to achieve relevant test scores with supporting documentation to identify substantial adaptive deficits in any of the six major life areas. Because the Appellant failed to demonstrate substantial deficits in at least three of the six major life areas, she failed to meet the functionality criteria for eligibility under the I/DD Waiver program.

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.
- 4) An individual must meet functionality criteria by exhibiting substantial deficits in three of six major life areas.
- 5) The Appellant did not meet the functionality 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 September 2022.

Eric L. Phillips
State Hearing Officer