



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

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September 15, 2022

[REDACTED]

Sent Via Electronic Mail: [stephanie.m.hill@wv.gov](mailto:stephanie.m.hill@wv.gov), [julia.a.wolf@wv.gov](mailto:julia.a.wolf@wv.gov)

Re: [REDACTED], A PROTECTED INDIVIDUAL V WV DHHR  
ACTION NO.: 21-BOR-1895

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,

Angela D. Signore  
State Hearing Officer  
Member, State Board of Review

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

cc: Kerri Linton, Psychological Consultation & Assessment  
Sarah Clendenin, Psychological Consultation & Assessment  
Stacy Broce, Bureau for Medical Services

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 22-BOR-1895**

**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 September 08, 2022, on an appeal filed July 25, 2022.

The matter before the Hearing Officer arises from the July 18, 2022 determination by the Respondent to deny the Appellant's medical eligibility for services under the Intellectual and Developmental Disabilities Waiver (I/DD Waiver) Program.

At the hearing, the Respondent appeared by Kerri Linton, Consulting Psychologist for the Bureau for Medical Services (BMS). The Appellant was represented by █. All witnesses were sworn and the following documents were admitted into evidence.

\*\* Observing for the Respondent was Jordan Mitchell, Psychological Consultation & Assessment (PC&A).

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual § 513.6- 513.6.4
- D-2 DHHR BMS Notice, dated July 18, 2022
- D-3 Independent Psychological Evaluation (IPE) (Second Medical), dated June 01, 2022
- D-4 Independent Psychological Evaluation (IPE), dated November 29, 2021
- D-5 DHHR BMS Notice, dated January 17, 2022
- D-6 █ Schools Individualized Education Program (IEP), dated May 28, 2021
- D-7 █ Circuit Court Order for █, filed December 15, 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) An application was made on behalf of the Appellant for services under the I/DD Waiver Program.
- 2) The Respondent, through the Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination. (Exhibits D-2 and D-5)
- 3) PC&A relies on Applied Behavior Analysis Scores (ABAS), along with narrative descriptions in the IPE, to determine the level of adaptive functioning. Scaled scores of one (1) and two (2) are considered eligible scores on the ABAS-3 for the I/DD Waiver Program. (Exhibit D-1)
- 4) The Appellant meets the diagnostic criteria for eligibility with a diagnosis of Intellectual Disability, Mild. (Exhibits D-3 and D-4)
- 5) On November 29, 2021, [REDACTED], a Licensed Psychologist, completed an IPE on the Appellant. (Exhibit D-4)
- 6) The November 29, 2021, IPE lists diagnoses of Attention Deficit Hyperactivity Disorder, Primary Inattentive Type, and Intellectual Disorder, Mild. (Exhibit D-4)
- 7) During the November 29, 2021 IPE, both the ABAS-3 scores and the supporting narrative descriptions established a substantial delay in the major life areas of *self-care* and *capacity for independent living*. (Exhibit D-4)
- 8) On January 17 2022, the Respondent issued a notice advising the Appellant that his application for I/DD Waiver Program eligibility was denied because the submitted documentation did not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas. (Exhibit D-5)
- 9) The January 17, 2022, notice reflected that the Appellant was found to lack substantial adaptive deficits in the areas of *learning*, *self-direction*, *receptive or expressive language*, and *mobility*. (Exhibit D-5)
- 10) The Respondent's January 17, 2022, denial was based on "11/29/21 IPE; 5/28/21 IEP; 12/15/20 Ordering Finding Juvenile Not Competent to Stand Trial". (Exhibit D-5)

- 11) On June 01, 2022, [REDACTED], completed an additional IPE on the Appellant. (Exhibit D-3)
- 12) The June 01, 2022, IPE lists diagnoses of Attention Deficit Hyperactivity Disorder, Combined Presentation - Moderate, and Mild Intellectual Disability. (Exhibit D-3)
- 13) During the June 01, 2022 IPE, both the ABAS-3 scores and the supporting narrative descriptions established a substantial delay in the major life areas of *self-care* and *receptive or expressive language (communication)*. (Exhibit D-3)
- 14) On July 18, 2022, the Respondent issued a notice advising the Appellant that he was ineligible for I/DD Waiver Program benefits because the submitted documentation did not support the presence of substantial adaptive deficits in three (3) or more of the six (6) major life areas (Exhibit D-2)
- 15) The July 18, 2022, notice reflected that the Appellant was found to lack substantial adaptive deficits in the areas of *learning, self-direction, mobility, and capacity for independent living*. (Exhibit D-2)
- 16) The Respondent's determination was based on the review of "06/1/22 IPE; 11/29/21 IPE; 1/27/22 Notice of Denial; 5/28/21 [REDACTED] Schools IEP; 12/15/20 [REDACTED] Competency to Stand Trial." (Exhibit D-2)

### **APPLICABLE POLICY**

#### **Bureau for Medical Services (BMS) Manual § 513.6 provides, in part:**

In order for an applicant to be found eligible for the IDWW Program, they must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN); which may include background information, mental status examination, a measure of intelligence, adaptive behavior, achievement, and any other documentation deemed appropriate.

#### **BMS Manual § 513.6.2 provides, in part:**

To be medically eligible, the applicant must require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. An ICF/IID provides services in an institutional setting for persons with intellectual disability or a related condition. An ICF/IID provides monitoring, supervision, training, and supports.

Evaluations of the applicant must demonstrate:

- A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase

- independence in activities of daily living; and
- A need for the same level of care and services that is provided in an ICF/IID.

The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits. An applicant must meet all the medical eligibility criteria in each of the following categories:

- Diagnosis;
- Functionality;
- Need for treatment; and
- Requirement of ICF/IID Level of Care

**BMS Manual § 513.6.2.1 provides, in part:**

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 may, if severe and chronic in nature, make an individual eligible for the IDDW 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 intellectually disabled persons, and requires services similar to those required for persons with intellectual disabilities.

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 under Section 513.6.2.2, Functionality.

**BMS Manual § 513.6.2.2 provides, in part:**

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 ID normative populations when intellectual disability 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.

## **DISCUSSION**

Pursuant to the policy, in order for an applicant to be found eligible for the I/DD Waiver Program, an individual must meet medical eligibility criteria. Initial medical eligibility is determined by the Medical Eligibility Contracted Agent (MECA) through a review of an Independent Psychological Evaluation (IPE) report completed by a member of the Independent Psychologist Network (IPN). To be medically eligible, criteria in each of the following categories must be met to be eligible for the I/DD Waiver Program: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care. Once an eligible diagnosis is established, the Respondent then evaluates to see if the Appellant meets the functional criteria for the I/DD Waiver Program. An adaptive behavior assessment is used to identify if the Appellant exhibits substantial adaptive deficits in the six (6) major life areas (*self-care, communication, learning, mobility, self-direction, and capacity for independent living*).

Policy defines substantial adaptive deficits as standardized scores of three (3) standard deviations below the mean, or less than one percentile (1%), when derived from a standardized measure of adaptive behavior. The applicant must also require the level of care and services provided in an ICF/IID as evidenced by required evaluations and other information requested by the IP or the MECA and corroborated by narrative descriptions of functioning and reported history. A need for intensive instruction, services, assistance, and supervision in order to learn new skills, maintain current level of skills, and/or increase independence in activities of daily living is required. Failure to meet any one of the eligibility categories results in a denial of program services. To establish that the Respondent correctly denied the Appellant's eligibility, the Respondent had to demonstrate

by a preponderance of the evidence that the Appellant lacked substantial adaptive deficits in three (3) or more of the six (6) major life areas.

During the June 01, 2022 second medical assessment, an ABAS-3 was administered to evaluate the Appellant's adaptive functioning level. The Appellant must have a standardized score of one (1) or two (2) to establish a substantial deficit in the six (6) major life areas. In addition to the standardized scores, the narrative descriptions in the IPE must also support the existence of substantial deficits. Keri Linton (Ms. Linton), the consulting psychologist for the Respondent, testified that the Appellant was awarded a substantial adaptive deficit in the areas of *self-care* and *receptive or expressive language (communication)*. Because the Appellant was found to lack adaptive deficits in the areas of *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*), on July 18, 2022, the Appellant's application for the I/DD Waiver Program was denied. It should also be noted that the Appellant was denied I/DD Waiver Program eligibility on one prior occasion – January 17, 2022.

In the area of *mobility*, the Respondent explained that in order to meet the threshold of a substantial deficit, an individual would normally be wheelchair-bound, unable to self-propel, or unable to transfer. Because the evidence demonstrated that the Appellant is independently ambulatory, a substantial deficit in the area of *mobility* could not be awarded. To demonstrate a substantial deficit in the area of *self-direction*, the evidence had to demonstrate that the Appellant was not able to make choices, show preferences, or start and stop activities independently. The Appellant's June 2022 ABAS-3 reflected a scaled score total of four (4). Although the Appellant may demonstrate barriers in making appropriate choices, the evidence establishes that the Appellant is capable of initiating and choosing to participate in activities, and therefore, a deficit could not be awarded.

To demonstrate a substantial deficit in the area of *capacity for independent living*, the Appellant would have to be awarded deficits in at least three (3) of the following six (6) sub-domains: *home/school living*, *social skills*, *employment*, *health and safety*, *community*, and *leisure activities*. When reviewing the Appellant's ABAS-3 scores, the Appellant received a one (1) in the area of *community*. In the area of *leisure activities*, the Appellant's ABAS-3 score reflected a scaled score of two (2). Because the Appellant only met two of the three required deficits in the sub-domain of *capacity for independent living*, the criteria for an additional deficit to be awarded was not met.

In the area of *learning (functional academics)*, the Respondent testified that the Appellant was able to complete a Wide Range Achievement Test, Fifth Edition (WRAT-5). The mean, or average, of this test is 100, with three (3) standard deviations below the mean, resulting in an eligible score of 55 or below. The Appellant scored a total of 71 in *word reading*, a 69 in *spelling*, a 58 in *math computation*, a total of 62 in *sentence comprehension*, and a *reading composite* of 66. Because the Appellant's overall WRAT-5 scores did not meet the policy threshold with scores of 55 or below, the criteria for an additional deficit to be awarded in the area of *functional academics* was not met.

Testimony was provided by the Appellant's Representative, [REDACTED]. The Appellant's Representative did not refute the Department's testimony and agreed that the evidence submitted

by the Department was consistent with their own. The Appellant's Representative did testify that the Appellant does demonstrate barriers in the area of communication; however, the Respondent had previously awarded a deficit in the area of *receptive or expressive language (communication)*. While the Appellant presents an eligible diagnosis per policy, and though the Appellant's Representative provided relevant information regarding the Appellant's communication challenges, the evidence and testimony confirm the Department's position that the Appellant fails to demonstrate the substantial adaptive deficits required by the policy in order to meet I/DD Waiver Program eligibility. Additionally, the documentation failed to demonstrate that the Appellant requires an ICF/IID Level of Care.

### **CONCLUSIONS OF LAW**

- 1) Policy for the I/DD Waiver Program requires an applicant to meet medical eligibility criteria in each of the following categories: diagnosis, functionality, need for active treatment, and requirement of ICF/IID Level of Care.
- 2) The Appellant has an eligible diagnosis of Intellectual Disability.
- 3) To be eligible for the Medicaid I/DDW Program, the Appellant must have an eligible diagnosis and concurrent substantial deficits in at least three of the six identified major life areas that require an ICF level of care.
- 4) Substantial deficits are evidenced by standardized adaptive behavior test scores three (3) standard deviations below the mean, or less than 1% when derived from a normative sample that represents the general population and must be supported by the narrative descriptions contained in the documentation submitted for review.
- 5) The Appellant did not have substantial adaptive deficits in at least three (3) of the six (6) major life areas as evidenced by standardized adaptive behavior test scores and the narrative descriptions contained within the evidence.

### **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 15th day of September 2022.



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**Angela D. Signore**  
State Hearing Officer