



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
433 MidAtlantic Parkway  
Martinsburg, WV 25404  
Telephone: (304) 352-0805 Fax: (304) 558-1992

Jolynn Marra  
Inspector General

October 18, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 22-BOR-2092

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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services  
PC&A

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 22-BOR-2092**

**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 October 12, 2022, on an appeal filed September 6, 2022.

The matter before the Hearing Officer arises from the August 5, 2022, decision by the Respondent to deny medical eligibility for services under the I/DD Waiver Program.

At the hearing, the Respondent appeared by Kerri Linton, consulting psychologist for the Bureau for Medical Services. The Appellant was present but was represented by her father, █. █. Appearing as a witness for the Appellant was █, Department of Rehabilitation Services. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual §§513.6 - 513.6.4
- D-2 Denial Notice, dated August 5, 2022
- D-3 Independent Psychological Evaluation (IPE) West Virginia I/DD Waiver, dated July 18, 2022
- D-4 Independent Psychological Evaluation (IPE) West Virginia I/DD Waiver, dated March 18, 2022
- D-5 Notice of Denial, dated April 1, 2022
- D-6 ABAS-3 (Teacher Form), Adaptive Behavior Assessment System, Third Edition, dated March 26, 2022
- D-7 Individualized Education Program, █ County Schools, dated March 10, 2022

- D-8 Eligibility Committee Report, ██████████ County Schools, dated October 22, 2019
- D-9 Reevaluation Determination Plan, ██████████ County Schools, dated March 14, 2019
- D-10 Neuropsychological Evaluation, dated October 26, 2010

**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 and underwent an Independent Psychological Evaluation (IPE) on March 18, 2022. (Exhibit D-4)
- 2) On April 1, 2022, the Respondent sent notification to the Appellant that the documentation submitted failed to support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation demonstrated a substantial limitation in only one major life area of *Self-Care*. (Exhibit D-5)
- 3) The Appellant requested a second medical evaluation which was performed on July 18, 2022. (Exhibit D-3)
- 4) On August 5, 2022, the Respondent sent notification to the Appellant that the documentation submitted failed to support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation demonstrated a substantial limitation in only one major life area of *Learning*. (Exhibit D-2)
- 5) The Appellant meets the diagnostic criteria for program eligibility with a diagnosis of Moderate Intellectual Disability (ID).
- 6) The Appellant graduated high school with a modified diploma.
- 7) The Appellant's July and March 2022 IPE narratives both note that she is ambulatory, has clear speech and articulation, is able to perform self-care and household chores with prompting and supervision, is able to make simple meals and use the microwave, and has preferences and makes choices in music, tv shows, and food. (Exhibits D-3 and D-4)
- 8) The Appellant has successfully participated in the school's work participation program and worked at ██████████. (Exhibit D-7)

## APPLICABLE POLICY

**Bureau for Medical Services Provider Manual §513.6.2, *Initial Medical Eligibility***, states: To be medically eligible, the applicant must require a 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 MECA determines the qualification for an ICF/IID level of care (medical eligibility) based on the IPE that verifies that the applicant has 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. For the IDDW Program, individuals must meet criteria for medical eligibility not only by test scores, but also narrative descriptions contained in the documentation.

In order to be eligible to receive IDDW 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.

**Bureau for Medical Services Provider Manual §513.6.2.1, *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 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 in Section 513.6.2.2, Functionality.

### **Bureau for Medical Services Provider Manual §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.

### **Bureau for Medical Services Provider Manual §513.6.2.3, *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**

Medical eligibility criteria in each of the following categories must be met in order to be eligible for the I/DD Waiver program: 1) *Diagnosis* of Intellectual Disability or related condition, which constitutes a severe and chronic disability that manifested prior to age 22; 2) *Functionality* of at least three substantial adaptive deficits out of the six major life areas that manifested prior to age 22; 3) *Active Treatment* - the need for active treatment; 4) *ICF/IID Level of Care* need for services

under the I/DD Waiver Program. Failure to meet any one of the eligibility categories results in a denial of program services. The Appellant only met the diagnostic criteria.

The Appellant applied for I/DD Waiver Program services and underwent an IPE on March 18, 2022. On April 1, 2022, the Respondent issued a notice that the documentation submitted failed to support substantial adaptive deficits in three or more major life areas identified for Waiver eligibility. The Appellant was found only to have a substantial limitation in the area of *Self-Care*. Subsequently, the Appellant requested a second medical determination and underwent another IPE on July 18, 2022. On August 5, 2022, the Appellant's application was denied based on only showing a substantial deficit in the area of *Learning*. The Appellant appeals the denial.

The Respondent's representative, Kerri Linton, testified that while the Appellant has an eligible diagnosis for the I/DD Waiver Medicaid Program, she met functionality criteria in only one major life area -- *Learning*. Ms. Linton explained that based on additional documentation that was received for the second medical determination, the achievement testing supported a substantial delay in learning. However, the documentation failed to support an adaptive deficit in the area of *Self-Care*. The teacher's ABAS-3 scores, IPE and IEP narratives, and neuropsychological evaluation all noted that the Appellant shows strength in adaptive behaviors. The Appellant is able to bathe, feed, and dress herself (with prompting and supervision), is able to prepare meals and use the microwave, and has successfully participated in the school's work exploration program working at [REDACTED]. Although the Appellant's father rated the Appellant with a 1 in the areas of communication, community use, functional learning, health and safety and a 2 in the area of leisure, on the current ABAS-3 test, it is not consistent with the narratives or other documentation.

The Appellant's father testified that his concern is that the Appellant does not have the skills for everyday living, such as driving and not being able to use a stove. The Appellant's father testified that he is seeking assistance for his daughter. However, pursuant to policy, an individual must meet all four criteria (diagnosis, functionality, active treatment, and ICF/IID level of care) in order to be considered medically eligible for the I/DD Waiver Program. The Appellant only meets the diagnostic criteria. The Respondent's decision to deny I/DD Waiver Program services is affirmed.

### **CONCLUSION OF LAW**

Whereas the Appellant does not meet the medical eligibility criteria for the I/DD Waiver Program set forth by policy, the Respondent must deny her application.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's denial of the Appellant's I/DD Waiver Program application.

**ENTERED this 18<sup>th</sup> day of October 2022.**

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**Lori Woodward, Certified State Hearing Officer**