



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

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November 18, 2022



RE: [REDACTED], A PROTECTED INDIVIDUAL v. WVDHHR
ACTION NO.: 22-BOR-2115

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
Kerri Linton, Psychological Consultation and Assessment
Janice Brown, KEPRO

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

█, A PROTECTED INDIVIDUAL,

Appellant,

v.

ACTION NO.: 22-BOR-2115

**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 October 19, 2022, on an appeal filed with the Board of Review on September 12, 2022.

The matter before the Hearing Officer arises from the Respondent's August 30, 2022 decision to deny the Appellant medical eligibility for the Medicaid Intellectual and Developmental Disabilities (I/DD) Waiver program.

At the hearing, the Respondent appeared by Kerri Linton, Psychological Consultation and Assessment (PC&A). Observing on behalf of PC&A was Jordan Mitchell. The Appellant appeared and was represented by █, the Appellant's mother. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Manual Excerpt
- D-2 Notice, dated August 30, 2022
- D-3 Independent Psychological Evaluation (IPE), dated August 25, 2022
- D-4 █ Schools Psychological Evaluation, dated September 17 and 18, 2012
- D-5 Individualized Education Program (IEP), dated May 1, 2014
- D-6 IPE, dated June 20, 2022
- D-7 Physician Letter, by █, D.O.
- D-8 Physician Letter, by █ MD
- D-9 Physician Progress Notes, dated June 2022

- D-10 Physician Progress Notes, dated January 2022
- D-11 Medication List and Medical Records
- D-12 Notice, dated August 1, 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 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) The Appellant has an eligible diagnosis of Mild Intellectual Disability (Exhibits D-3 and D-6)
- 3) The Appellant's initial application for Medicaid I/DD Waiver Program eligibility was denied (Exhibit D-12).
- 4) The Appellant obtained a second medical evaluation (Exhibits D-3 and D-6).
- 5) On August 30, 2022, the Respondent issued a notice advising the Appellant's medical eligibility for the Medicaid I/DD Waiver Program was denied because "documentation submitted for review does not support the presence of substantial adaptive deficits in 3 of the 6 major life areas identified for Waiver eligibility within the developmental period (prior to age 22) as required by policy" (Exhibit D-2).
- 6) On June 20, 2022, an Independent Psychological Evaluation (IPE) was completed with the Appellant (Exhibit D-2).
- 7) On June 20 and August 25, 2022 the Appellant's mother, [REDACTED], completed the Adaptive Behavior Assessment System 3 (ABAS-3) (Exhibits D-3 and D-6).
- 8) The June 20 and August 25, 2022 ABAS-3 results indicated scores of 1 in the areas of *communication, community use, functional academics, health and safety, leisure, self-care, self-direction, and social* (Exhibit D-3).
- 9) An ABAS-2 administered in September 2012 indicated no significant delay in any of the major life areas (Exhibit D-4).
- 10) The Appellant is able to independently complete tasks with prompting in the area of *self-care* (Exhibits D-3 and D-6).

- 11) The Appellant did not have significant delays in *communication* during the developmental period (Exhibit D-5).
- 12) The Appellant is "able to communicate her wants and needs effectively verbally without the use of any assistive devices" (Exhibit D-3).
- 13) The Appellant "speaks in sentences and can follow one-step instructions and basic two-step instructions" (Exhibit D-6).
- 14) Documentation submitted supported the presence of a substantial delay in the area of *learning* during the Appellant's developmental period (Exhibits D-4 and D-5).
- 15) The Appellant is able to ambulate independently without the use of mechanical aids (Exhibits D-3 and D-6).
- 16) The Appellant is able to make choices when presented with options (Exhibit D-3 and D-6).
- 17) The Appellant did not have substantial deficits in three subdomains of the major life area of *capacity for independent living* during the developmental period (Exhibits D-3 through D-6).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual § 513.6 provides in pertinent part:

In order for an applicant to be found eligible for the I/DD Waiver Program, they must meet medical eligibility ... Medical eligibility is determined by the Medical Eligibility Contract Agent (MECA) through a review of the IPE completed by a member of the Independent Psychologist Network.

BMS Manual § 513.6.1.1 provides in pertinent part:

The applicant chooses a psychologist in the Independent Psychologist Network (IPN) and contacts the IP to schedule the appointment The Independent Psychological Evaluation (IPE) is used to make a medical eligibility determination.

BMS Manual § 513.6.2 provides in pertinent parts:

To be medically eligible, the applicant must require the level of care and services provided in an Intermediate Care Facility ... The IPE verifies that the applicant has an intellectual disability with concurrent substantial deficits manifested during the developmental period before age 22.

BMS Manual § 513.6.2.2 provides in pertinent part:

The applicant must have substantial deficits in at least three of the six identified major life areas:

- Self-care;
- Communication;
- Learning;
- Mobility;
- Self-direction; and
- Capacity for independent living

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 [emphasis added] be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review.

DISCUSSION

The Bureau for Medical Services (BMS) has the authority to contract with Psychological Consultation and Assessment (PC&A) as the Medical Eligibility Contracted Agent (MECA) to determine applicant eligibility for the Medicaid I/DD Waiver Program. PC&A is required to determine the Appellant's eligibility through review of an Independent Psychological Evaluation (IPE) report. The MECA 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 MECA followed the policy when making a decision about the Appellant's Medicaid I/DD Waiver eligibility. Further, the Board of Review cannot make clinical determinations regarding the Appellant's major life area deficit severity and can only decide if the Respondent correctly determined the Appellant's eligibility based on the major life area deficit severity reflected in the submitted documentation.

During the hearing, the Respondent's representative stipulated the Appellant has an eligible diagnosis of Mild Intellectual Disability. The Appellant's mother testified that the Appellant requires 24-hour care due to her major life area limitations. The Appellant contested the Respondent's denial of her medical eligibility for the Medicaid I/DD Waiver Program.

The Respondent bears the burden of proof. To prove that the Appellant was correctly denied

medical eligibility for the Medicaid I/DD Waiver Program, the Respondent had to demonstrate by a preponderance of the evidence that relevant test scores and narrative descriptions contained in the documentation submitted for review failed to establish that the Appellant demonstrated substantial limitations in three of the six major life areas during the developmental period.

Major Life Area Deficit Severity

To establish medical eligibility for the Medicaid I/DD Waiver Program, the documentation submitted had to demonstrate the presence of substantial deficits in three of the six major life areas during the developmental period as corroborated by the IPE narrative and relevant test scores. The evidence demonstrated that the Appellant had substantial limitations in *learning* during the developmental period.

Self-Care

The Appellant's mother provided testimony that the Appellant withheld information during completion of the IPE because the Appellant was embarrassed to disclose she needed help showering. The Appellant's mother provided testimony that she physically assists the Appellant getting in and out of the shower, getting dressed, and putting on shoes due to the Appellant's limitations related to her medical diagnoses.

To meet the deficit severity criteria in the area of *self-care*, the Appellant would need to require total care to complete self-care tasks. During the hearing, the Respondent's representative testified that individuals who meet significant delay severity criteria in the area of *self-care* require hand-over-hand physical assistance to complete tasks like brushing teeth. The evidence reflected that the Appellant requires prompting to appropriately complete self-care tasks but can independently perform self-care tasks once prompted.

Letters provided by the Appellant's physicians indicated that the Appellant was, "unable to help with her own care and with daily life," and that the Appellant's mother "assists [the Appellant] with activities of daily living." The letters do not stipulate what type of care the Appellant requires or specify what type of assistance is provided to facilitate the Appellant's completion of activities of daily living. While the Appellant has limitations in this area, the preponderance of the evidence failed to establish that the Appellant had severe limitations related to her I/DD diagnosis in the area of *self-care* during the developmental period.

Communication

To meet severity criteria in the area of *communication*, the Appellant would need to be nonverbal, have limited word usage, or use an assistive device to communicate. During the hearing, the Appellant's mother testified the Appellant requires a hearing aid. Although the Appellant requires an assistive device to hear, no evidence was entered to establish that the Appellant required an assistive device to express her wants and needs. The evidence reflected that the Appellant is able to effectively communicate without the use of an assistive device. The evidence presented did not indicate that the Appellant had a significant delay in the area of *communication* during the developmental period.

Mobility

To meet deficit severity criteria in the area of *mobility*, the Appellant must require the use of mechanical devices. The evidence reflected that the Appellant is able to independently ambulate without the use of mechanical devices. The Respondent's representative testified that because the Appellant does not require the use of mechanical devices, the Appellant does not meet deficit severity criteria in the area of *mobility*.

Self-Direction

During the hearing, the Respondent's representative testified that individuals who meet severity criteria in the area of *self-direction* lack the ability to choose activities. The evidence presented indicated that the Appellant is able to choose whether to engage in activities and has a list of preferred activities in which to engage in. While the IPE narrative indicated the Appellant has low participation in leisure activities, the preponderance of the evidence reflected that the Appellant has the ability to initiate activities and to choose an active lifestyle or remain passive. Therefore, the evidence failed to establish that the IPE narrative corroborated that the Appellant met deficit severity criteria in the area of *self-direction*.

Capacity for Independent Living

To meet deficit severity criteria in the area of *Capacity for Independent Living*, the IPE narrative had to support that the Appellant met severity criteria in three subdomains of this area. The evidence presented indicated that the Appellant requires assistance managing her medical conditions, cooking, and being safe at home and in the community. While the evidence presented established that the Appellant has limitations in the subdomains of *capacity for independent living* and would be incapable of living independently, the evidence failed to establish that the Appellant had significant delays in three subdomains of *capacity for independent living* during the developmental period.

Relevant Test Scores

To demonstrate significant delay, the Adaptive Behavior Assessment System scaled scores had to be 1 or 2. The ABAS-3 scores must be corroborated by the narrative of the IPE. The preponderance of the evidence reflected that the ABAS-3 scores were inconsistent with the IPE psychologists' narrative assessments of the Appellant's abilities in the major life areas. During the Appellant's developmental period, ABAS-2 scores indicated no significant delay in any of the major life areas.

The ABAS-3 scores were obtained after the developmental period and were inconsistent with the Appellant's functioning narrative on the IPE and previous ABAS-2 scores during the developmental period. Even if the ABAS-3 scores and IPE narrative had matched, there was no documentation submitted to verify that the Appellant met the deficit severity criteria in three major life areas during the developmental period. The preponderance of evidence failed to establish that the Appellant met severity criteria in additional major life areas during the developmental period.

The Board of Review cannot disregard the policy requirement that substantial functioning deficits during the developmental period be established by relevant test scores and narrative descriptions contained in supporting documentation. As such, additional deficits could not be awarded in additional areas.

CONCLUSIONS OF LAW

- 1) To be determined medically eligible for the Medicaid I/DD Waiver Program, the submitted documentation must verify the presence of substantial deficits, during the developmental period, in at least three of the six major life areas.
- 2) The preponderance of the evidence established the presence of one substantial deficit during the developmental period — in the area of *learning*.
- 3) As the preponderance of evidence failed to demonstrate the presence of substantial deficits in additional areas during the Appellant's developmental period, 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 decision by the Department to deny the Appellant medical eligibility for the Medicaid I/DD Waiver Program.

ENTERED this 18th day of November 2022.

Tara B. Thompson, MLS
State Hearing Officer