



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

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Sheila Lee  
Interim Inspector General

November 2, 2022

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. WV DHHR  
ACTION NO.: 22-BOR-2232

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matters.

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,

Todd Thornton  
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  
KEPRO

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

█, A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action No.: 22-BOR-2232**

**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 20, 2022, on an appeal filed September 29, 2022.

The matter before the Hearing Officer arises from the Respondent's August 31, 2022 decision to deny the Appellant's application for participation in the I/DD Waiver Program due to unmet medical eligibility.

At the hearing, the Respondent was represented by Kerri Linton. The Appellant was represented by her mother, █. Appearing as a witness for the Appellant was █. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- |     |  |
|-----|--|
| D-1 | Bureau for Medical Services Provider Manual (excerpt)<br>Chapter 513 – Intellectual and Developmental Disabilities Waiver (IDDW)<br>§§ 513.6 – 513.6.4 |
| D-2 | Notice of Decision, dated August 31, 2022  |
| D-3 | Independent Psychological Evaluation (IPE)<br>Evaluation date: July 27, 2022   |
| D-4 | IPE<br>Evaluation Date: May 11, 2022   |

D-5 Notice of Decision, dated June 1, 2022

D-6 After Visit Summary, [REDACTED], dated April 15, 2019

**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 was an applicant for the I/DD Waiver Program.
- 2) The Respondent, through its Bureau for Medical Services, contracts with Psychological Consultation & Assessment (PC&A) to perform functions related to the I/DD Waiver Program, including eligibility determination.
- 3) Kerri Linton, a licensed psychologist employed by PC&A, made the eligibility determination regarding the Appellant.
- 4) The Respondent denied the Appellant's application for the I/DD Waiver Program in a notice dated June 1, 2022 (Exhibit D-5).
- 5) This notice (Exhibit D-5) provided the basis for denial as "Documentation provided for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."
- 6) The notice to the Appellant (Exhibit D-5) indicated the Appellant did not have "substantial adaptive deficits" in any of the "six major life areas identified for Waiver eligibility."
- 7) The Appellant was evaluated in an Independent Psychological Evaluation (IPE) conducted on May 11, 2022. (Exhibit D-4)
- 8) The Appellant obtained a Full Scale IQ of 80 on the Weschler Intelligence Scale of Children, Fifth Edition (WISC-V). (Exhibit D-4)
- 9) Results from the WISC-V "...are converted to standard scores with a mean of 100 and a standard deviation of 15." (Exhibit D-4)
- 10) The Appellant obtained standard scores on the Wide Range Achievement Test, Fifth Edition (WRAT-5), of 92 in Word Reading, 92 in Spelling, and 80 in Math Computation. (Exhibit D-4)

- 11) Results from the WRAT-5 "...are converted into standard scores with a mean of 100 and a standard deviation of 15." (Exhibit D-4)
- 12) The Adaptive Behavior Assessment System, Third Edition-Parent Form (ABAS-3) was administered during the May 2022 evaluation of the Appellant. (Exhibit D-4)
- 13) The ABAS-3 results for the Appellant were based on the responses provided by her mother. (Exhibit D-4)
- 14) The Appellant obtained no standard scores indicating substantial adaptive behavior deficits on the ABAS-3 from the May 2022 evaluation of the Appellant. (Exhibit D-4)
- 15) The Gilliam Autism Rating Scale – Third Edition (GARS-3), was administered to the Appellant during the May 2022 evaluation to determine the probability of, and severity of autism. (Exhibit D-4)
- 16) The GARS-3 results for the Appellant were based on the responses provided by her mother. (Exhibit D-4)
- 17) The Appellant's GARS-3 results included an Autism Index of 77, which corresponded to a "very likely" probability of Autism Spectrum Disorder, and a severity level of two (2). (Exhibit D-4)
- 18) The Appellant was diagnosed with Autism Spectrum Disorder, Level 1, on the May 2022 evaluation. (Exhibit D-4)
- 19) The Appellant requested a second medical evaluation following the initial denial by the Respondent.
- 20) The Respondent issued a notice dated August 31, 2022, to the Appellant, advising that the second determination was also denied. (Exhibit D-2)
- 21) This notice (Exhibit D-2) provided the basis for denial as "Documentation provided for review does not indicate an eligible diagnosis of Intellectual Disability or a Related Condition which is severe."
- 22) The notice to the Appellant (Exhibit D-2) indicated the Appellant did not have "substantial adaptive deficits" in any of the "six major life areas identified for Waiver eligibility."
- 23) The Appellant obtained a Full Scale IQ of 76 on the WISC-V administered in July 2022 (Exhibit D-3).
- 24) The Appellant obtained eligible standard scores of one (1) in *Self-Care, Self-Direction*, and two of the sub-domains in the major life area of *Capacity for Independent Living – social skills and health and safety*.

- 25) The Appellant obtained standard scores of 94, 100, 71, 70, and 80, on the WRAT-5 administered in July 2022. (Exhibit D-3)
- 26) The Appellant obtained an Autism Index score of 118 on the GARS-3 administered in July 2022, indicating a “very likely” probability of Autism Spectrum Disorder, and a severity level of three (3).
- 27) On the July 2022 evaluation, the Appellant was diagnosed with Autism Spectrum Disorder, Level 2, Requiring Substantial Support; Borderline Intellectual Functioning; Specific Learning Disorder in Mathematics; and, Specific Learning Disorder in Reading Comprehension. (Exhibit D-3)

### **APPLICABLE POLICY**

The policy regarding the I/DD Waiver Program is located in the Bureau for Medical Services Provider Manual, Chapter 513.

At §513.6.2, this policy addresses initial medical eligibility, and reads, “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.”

At §513.6.2.1, this policy addresses the diagnostic component of medical eligibility, and reads, “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.”

At §513.6.2.2, this policy addresses the functionality component and its required criteria. The policy requires an applicant to have substantial deficits in at least three of the six (6) major life areas – self-care, receptive or expressive language, learning, mobility, self-direction and capacity for independent living. The capacity for independent living domain is further divided into six (6) sub-domains – home living, social skills, employment, health and safety, community, and leisure. Policy requires a minimum of three (3) of these sub-domains to be substantially limited for an applicant to meet the criteria for this major life area.

Functionality policy (§513.6.2.2) also defines substantial deficits 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 [intellectually disabled] normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior.”

## DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent's decision to deny her application for the I/DD Waiver Program based on its determination that she did not establish medical eligibility. The Respondent must show by a preponderance of the evidence that the Appellant did not establish medical eligibility for the program.

The Respondent's denial of the Appellant's application was based on unmet diagnostic and functionality requirements. The Appellant was evaluated in an initial assessment, resulting in a denial from the Respondent. A second evaluation was conducted, and the Appellant was denied a second time.

The Appellant was diagnosed with Autism Spectrum Disorder, which is a potentially eligible diagnosis, if severe. Such diagnoses must meet the most severe designation, or Level 3, and the Appellant did not obtain a Level 3 diagnosis. The Appellant obtained a GARS-3 test result indicating Level 3 severity, but the assessing psychologist only offered a Level 2 diagnosis. The change in test results from May 2022 to July 2022 also result in lower weight given to the July 2022 results because no explanation was offered for the dramatic change in scores provided by the Appellant's mother. Ultimately, the Appellant needed to have a diagnosis indicating a Level 3 severity of Autism Spectrum Disorder and did not.

Additional testing of the Appellant did not produce results that were three standard deviations below the mean. The Appellant was given the WISC-V and WRAT-5 and obtained scores at or near the mean in some areas, but never at the threshold set by policy for substantial delays. WISC-V and WRAT-5 scores for the Appellant did not support either a diagnosis of intellectual disability or a substantial deficit in the functionality major life area of learning.

The Appellant's mother and her witness, [REDACTED], testified regarding the behavior and functionality of the Appellant. They described issues with self-care, self-direction, and health and safety. The Appellant obtained eligible scores in these areas, for purposes of functionality. However, policy requires applicants to provide narrative descriptions matching the standard scores. Despite receiving a standard score of one (1) in self-care, the Appellant was described as needing "...assistance with bathing and washing her hair so that they are done adequately...She toilets independently...She is able to pick out a snack for herself to eat, but she does not cook..." The Appellant does not have eligible scores in three (3) of the six (6) sub-domains to indicate a deficit overall in the area of Capacity for Independent Living, so even if the ABAS-3 scores are accepted as valid, the Appellant would only have scores supporting substantial adaptive deficits in two (2) of the six (6) major life areas. Without at least three (3) such deficits, the policy component of functionality is not met.

Based on the reliable information provided at the hearing, the Appellant did not meet the medical eligibility criteria for participation in the I/DD Waiver Program, and the Respondent was correct to deny the Appellant's application.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant does not have an eligible diagnosis, she has not met the diagnostic component of medical eligibility for the I/DD Waiver Program.
- 2) Because the Appellant did not have test scores showing substantial adaptive deficits in three (3) of the six (6) major life areas defined by policy, she has not met the functionality component of medical eligibility for the I/DD Waiver Program.
- 3) Because the Appellant did not establish medical eligibility, the Respondent must deny the Appellant's application for I/DD Waiver services.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant's application for the I/DD Waiver Program due to unmet medical eligibility.

**ENTERED this \_\_\_\_ Day of November 2022.**

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**Todd Thornton  
State Hearing Officer**